United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

ORIGINAL

76-7158

UNITED STATES COURT OF APPEALS
FILED
MAY 28 1976
DANIEL FUSARO, CLERK
SECOND CIRCUIT

United States Court of Appeals
FOR THE SECOND CIRCUIT

THE EASTERN MARINE & FIRE INSURANCE CO.,
Plaintiff-Appellant,

against

S.S. COLUMBIA, her engines, boilers, etc., ORIENTAL EXPORTERS, INC., and OGDEN SEA TRANSPORT, INC., as successor to SEA TRANSPORT, INC.,
Defendants-Appellees,

OGDEN SEA TRANSPORT, INC., as successor to SEA TRANSPORT, INC.,
Third-Party Plaintiff-Appellee,

against

JOHN PEMBERTON MOSSE, an Underwriter at Lloyd's, and INDEMNITY MARINE ASSURANCE CO., LTD.,
Third-Party Defendants-Appellants.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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United States Court of Appeals
FOR THE SECOND CIRCUIT

THE EASTERN MARINE & FIRE INSURANCE CO.,
Plaintiff-Appellant,

against

S. S. COLUMBIA, her engines, boilers, etc., ORIENTAL EXPORTERS, INC., and OGDEN SEA TRANSPORT, INC., as successor to SEA TRANSPORT, INC.,
Defendants-Appellees,

OGDEN SEA TRANSPORT, INC., as successor to SEA TRANSPORT, INC.,
Third-Party Plaintiff-Appellee,

against

JOHN PEMBERTON MOSSE, an Underwriter at Lloyd's, and INDEMNITY MARINE ASSURANCE CO., LTD.,
Third-Party Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Docket Entries.

DATE		
1968		
Dec.	3	Filed Complaint.
Dec.	24	Filed Summons and return;
		Oriental Exporters, Inc. by C. J. Floyd, on 12/5/68
		Sea Transport, Inc. by C. J. Floyd, on 12/5/68
		Sunda Marine, Inc. by J. A. Crooks, on 12/10/68.

Docket Entries.

DATE	
1969	
Jan. 3	Filed Deft.'s (Sunda Marine, Inc.) Answer and Cross-claim; issued Summons.
Jan. 16	Filed Summons and return; Oriental Exporters, Inc. by C. J. Floyd, on 1/8/69 Sea Transport, Inc. by C. J. Floyd, on 1/8/69.
1970	
Jan. 19	Filed Pltff.'s Notice to Take Deposition of Central Resources.
Oct. 23	Filed deft.'s (Oriental Exporters, Inc.) Answer and Counterclaim; issued Summons.
Nov. 9	Filed Summons on Counterclaim and return; Mendes & Mount by Ms. Church, on 10/23/70.
Nov. 12	Filed Stip & Order extending time to answer Counterclaim to 1/22/71. So ordered Lasker, J.
1971	
Feb. 19	Filed Stip & Order extending Pltff.'s time to answer Counterclaim to 3/22/71. So ordered Wyatt, J.
Apr. 23	Filed Deft.'s & Pltff.'s Answer to Counterclaim.
Dec. 23	Filed Deft.'s Notice of Change of Firm Name.
1972	
Sept. 13	Filed Pltff.'s Note of Issue and Statement of Readiness.
1973	
Jan. 26	Filed Pltff.'s List of Exhibits to be introduced at trial.
Jan. 26	Filed Pltff.'s Finding of Fact.

Docket Entries.

DATE	
Jan. 26	Filed Pltff.'s Conclusions of Law.
Sept. 27	Filed Notice of Pltff. and Third-Party Defts. to take deposition of Salvage Association London, on 10/9/73.
1974	
July 15	Filed Defts.' Oriental Exporters, Inc. and Sea Transport, Inc.'s Interrogatories.
Aug. 13	Filed Pltffs' Answers and Objections to Interrogatories.
Aug. 16	Filed Deft.'s Affdvt. of Joseph C. Smith and Notice of Motion for an Order under Rule 37(a). Return 9/3/74.
Aug. 26	Filed Pltff.'s affdvt. of Richard H. Webber in opposition to Deft.'s Motion for an Order requiring Pltff. to Answer certain written Interrogatories.
Aug. 26	Filed Pltff.'s Memorandum of Law in Opposition to Deft. shipowner's motion for an Order Compelling Answers to Interrogatories.
Sept. 17	Filed memo endorsed on motion filed 8/16/74.
Oct. 30	Filed transcript of record of proceedings, dated 9/16/74.
Oct. 30	Filed transcript of record of proceedings, dated 9/18, 20/74.
Nov. 18	Filed Stip & Order of dismissal with prejudice as against Deft. Sunda Marine, Inc. So ordered, Duffy, J.
Nov. 25	Filed transcript of record of proceedings, dated 9/20/74.
Dec. 18	Filed transcript of record of proceedings, dated 10/2/74.
Dec. 27	Filed deposition of Capt. William Edward Heath, taken 8/19/74.

Docket Entries.

DATE	
1976	
Feb. 27	Filed Deft.'s proposed Findings of Fact and Conclusions of Law, filed in Court 9/16/74.
Feb. 27	Filed Pltff. and Third-Party Defts.' pre-trial proposed Finding of Fact.
Feb. 27	Filed Pltff.'s and Third Party Deft.'s Pre-trial Brief.
Feb. 27	Filed Post-trial memorandum of Pltff. and Third-Party Defts.
Feb. 27	Filed Deft. Ogden Sea Transport, Inc. Brief after trial.
Feb. 27	Filed Deft. Ogden Sea Transport, Inc. Trial Brief. (filed in Court 9/16/74)
Feb. 27	Filed OPINION #43966—for the reasons stated, I hold that the Deft. has met its burden of proof on the facts in this case and did exercise due diligence within the meaning of §§ 1303 and 1304 of Title 46 U.S.C. Settle order on notice. DUFFY, J. (m/n)
Mar. 2	Filed Memorandum and Order—Opinion #43966 (amended)—Line 15 on page 5 of my Opinion dated 2/26/76 is amended to read as indicated. So ordered—DUFFY, J. (m/n)
Mar. 26	Filed Pltff. and Third-Pty Defts' Notice of Appeal to USCA from the final Judgment #43966 entered on 2/27/76. Copy to: Burlingham, Underwood & Lord. Ent. 3/26/76.
Apr. 30	Filed notice that the record on appeal has been certified and transmitted to the USCA on this date.

Opinion and Order Appealed From.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

68 Civ. 4798

THE EASTERN MARINE & FIRE INSURANCE COMPANY,

Plaintiff,

—against—

S.S. COLUMBIA, her engines, boilers, etc., ORIENTAL EXPORTERS, INC., and OGDEN SEA TRANSPORT, INC., as successor to SEA TRANSPORT, INC.,

Defendants,

—and—

OGDEN SEA TRANSPORT, INC., as successor to SEA TRANSPORT, INC.,

Third-Party Plaintiff,

—against—

JOHN PEMBERTON MOSSE, an Underwriter at Lloyd's, and INDEMNITY MARINE ASSURANCE CO., LTD.,

Third-Party Defendants.

APPEARANCES:

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN, Esqs.
Attorneys for Plaintiff and Third-Party Defendants
By: Alan S. Loesberg, Esq.
Richard Webber, Esq.,
Of Counsel

Opinion and Order Appealed From.

BURLINGHAM UNDERWOOD & LORD, Esqs.
Attorneys for Defendants and Third-Party Plaintiffs
By: Joseph C. Smith, Esq.
Of Counsel

KEVIN THOMAS DUFFY, D.J.

The ship's rudder fell off in the middle of the Indian Ocean.

This occurrence happened under conditions to be expected in that place at that time of the year. (These conditions will be more specifically set forth hereinafter.)

The owner declared a general average.

The plaintiff, Eastern Marine and Fire Insurance Company (hereinafter referred to as "Eastern") seeks to recover from the owners and operators of the S.S. COLUMBIA the sum of $120,000 which Eastern deposited as security for the general average claim arising out of this occurrence in August 1966. In turn, Ogden Sea Transport, Inc. (hereinafter "Ogden") seeks recovery of $47,200.86 from the plaintiff Eastern and the third-party defendants Corporation of Lloyd's (hereinafter referred to as "Lloyd's") for the unpaid portion of the general average expenses.

At the time in question, the S.S. COLUMBIA was carrying a cargo of superphosphate from Safi, Morocco, to Korea. It is the position of the plaintiff that the S.S. COLUMBIA was unseaworthy with respect to her cargo at the time of sailing from Safi, Morocco, and that the defendants had failed to exercise due diligence to make the ship seaworthy prior to such sailing. The defendants of course dispute the foregoing and claim that the loss of the rudder was caused by the ship encountering heavy seas and thus that the cargo owners are liable for their portion of the general average.

Opinion and Order Appealed From.

The S.S. COLUMBIA is a bulk carrier, having been converted from a T-2 tanker in 1962 by the insertion of a new midbody. On October 4, 1963, the COLUMBIA grounded while lying aside a pier at the port of Kandla, India, and, apparently, the vessel's rudder assembly suffered damage. The damage was repaired between March 25 and April 4, 1964, when the ship was drydocked in Norfolk, Virginia. At that time the rudder palm was disconnected and the top and bottom rudder pintles were removed. The rudder was also removed to the shipyard's shop for further examination and repairs. The rudder stock was removed from the vessel as well and taken to the shop where it was examined and checked, together with the rudder for alignment. At that time the top pintle was found to be fractured and was renewed, including a bronze liner. A fracture in the rudder plating was v-ed out and rewelded, after which the rudder was tested and found tight. A new skeg was installed and modifications were made to it with the approval of the American Bureau of Shipping, and a surveyor for the Salvage Association of London. Apparently the repairs were made to the satisfaction of the vessel's Master, the owner's marine surveyor and the various inspectors and other surveyors.

The COLUMBIA was operated until the following March 1965, when she was again drydocked, this time at Jacksonville, Florida. According to a report to the American Bureau of Shipping, dated March 25, 1965, certain repairs were made to the rudder and the rudder assembly, including the removal of the lower pintle "to shop" and its subsequent reinstallation. Apparently the nut holding the lower pintle in place was found to be loose and afterwards the pintle was reinstalled and the nuts on the lower and upper pintles were hardened up. Nut-keepers were installed on both nuts and a flat bar installed on the lower edge of the pintle in the skeg to prevent the pintle from dropping down if the pintle nut became loose.

After the completion of the repairs at Jacksonville in 1965, the vessel retained the highest ABS classification. On April 29, 1966, Sunda Marine, Inc. and the Office of Supply, Government of the Republic of Korea, entered into a charter for the carriage of 20,000 metric tons of superphosphate in bulk from Safi, Morocco, to a port in South Korea. It was this shipment that came to be insured by the plaintiff.

On or about July 15, 1966, the COLUMBIA arrived at Safi, Morocco, and her master and chief enginer made inspections of the visible hull, rudder and propeller when the ship was unladen, at which time nothing unusual was found.

On or about July 18, 1966, the COLUMBIA, laden with the superphosphate, sailed from Morocco and made her way through the Atlantic Ocean, Mediterranean Sea, the Suez Canal and the Red Sea to the Indian Ocean. There, on August 2, 1966, the COLUMBIA encountered the monsoon winds which begin in mid-June and have been known to be generally heavy from then to the end of July or early August, after which the winds generally moderate. The log for the COLUMBIA shows that on August 2, 1966 the ship encountered winds of force on a Beaufort scale; the same force was encountered on August 3rd until about noon when the winds and seas abated to force 6-7 by the time, 1635 in the afternoon, that the rudder was lost.

The ship was thereafter towed to Ceylon and subsequently to Singapore for repairs.

There was no evidence of any grounding or the striking of a submerged object or bank or the like, to cause the loss of the rudder. The deck logs and the engine logs contain no reference to an incident that might have been relevant to the loss.

At Singapore, a diver's inspection found that the rudder was fractured at approximately two inches below the palm flange. The upper pintle was still in place although the pintle nut was missing and the pintle threads damaged. The lower pintle and pintle nut were missing although the bushing in the skeg apparently was in place. The skeg was undamaged.

All parties agree that United States law applies, and particularly the Carriage of Goods by Sea Act, 46 U.S.C. §§ 1300 *et seq.*

Was the ship unseaworthy? I must conclude that she was. The fact that the ship's rudder fell off on a voyage while not encountering abnormal seas for the voyage and without any other apparent outside cause compels the conclusion that in fact and in law the ship was unseaworthy. *Great American Insurance Company* v. *Bureau Veritas*, 338 F. Supp. 999, (S.D.N.Y. 1972), aff'd, 478 F.2d 235 (2d Cir. 1973).

> ". . . [w]here a vessel is lost under ordinary conditions with no other explanation, the law presumes that she was unseaworthy. *Federazione Italiana Dei Corsorzi Agrari* v. *Mandask Compania de Vapores*, S.A., 388 F. 2d 434, 436 (2d Cir.) *cert. denied* 393 U.S. 828 (1968); *South, Inc.* v. *Moran Towing & Transportation Co.*, 360 F.2d 1002, 1005 (2d Cir. 1966)." *Great American, supra*, at 1008.

This, however, does not end our inquiry. The Carriage of Goods by Sea Act expressly provides in part (46 U.S.C. § 1303(1)):

> "The carrier shall be bound, before and at the beginning of the voyage, *to exercise due diligence* to—
>
> (a) make the ship seaworthy; * * *" (emphasis supplied).

The same principle is found in the following section stated as an immunity (46 U.S.C. § 1304(1)):

> "Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness *unless caused by want of due diligence on the part of the carrier to make the ship seaworthy,* * * *" (emphasis supplied).

Two questions are, thus, presented for determination by this Court: (1) did the owner exercise due diligence to see that the vessel was seaworthy? and (2) who has the burden of proof on the question of due diligence?

Turning to the second question first, it seems to me clear that the vessel and the carrier have the burden of proof to show "due diligence". The grant of "immunity" in Section 1304 of Title 46 U.S.C. is such as to place the burden of proof on the person claiming it. Indeed, any other construction would fly in the face of reality for the owner of a vessel is in the unique position to know what, if any, repairs had been made to the ship to make her seaworthy prior to the voyage. See *Encyclopedia Britannica, Inc.* v. *S.S. Hong Kong Producer,* 422 F.2d 7, 16 (2d Cir. 1969), *cert. denied,* 397 U.S. 964 (1970). See also *DuPont de Nemours International, S.A.* v. *S.S. Mormacvega,* 493 F.2d 97, 100 at n. 7 (2d Cir. 1974); H.R. Rep. No. 2218, 74th Cong., 2d Sess. 8-9 (1936).

The burden falls thus on the owner, here the defendant, to prove its "due diligence". I find that it has met that burden.

When the rudder assembly was first damaged in India in 1963, repairs were made fairly promptly under the supervision of independent marine surveyors, all of whom apparently passed favorably on the workmanship of the repairs and the ship was restored to the highest classifica-

tion of the American Bureau of Ships. Subsequently, the COLUMBIA was again put in drydock and inspected. Keeper bars were installed over the pintle [nuts]. Again independent marine surveyors and inspectors found the work to be satisfactory and the ship seaworthy.

The captain and the chief engineer visually inspected the rudder and other parts of the ship while it was light at the dock in Safi immediately prior to the voyage in question.

What more could be done? It is not necessary that a ship be drydocked prior to every voyage. Nor is it required that the rudder and the other metal parts be X-Rayed to determine possible metal fatigue.

I hold, therefore, that the defendant has met its burden of proof on the facts in this case and did exercise due diligence within the meaning of §§ 1303 and 1304 of Title 46 U.S.C.

Settle order on notice.

.....

U. S. D. J.

Dated: New York, New York

1976

Notice of Appeal.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE EASTERN MARINE & FIRE INSURANCE COMPANY,

Plaintiff,

—against—

S.S. COLUMBIA, her engines, boilers, etc., ORIENTAL EXPORTERS, INC., and OGDEN SEA TRANSPORT, INC., as successor to SEA TRANSPORT, INC.,

Defendants,

—and—

OGDEN SEA TRANSPORT, INC., as successor to SEA TRANSPORT, INC.,

Third-Party Plaintiff,

—against—

JOHN PEMBERTON MOSSE, an Underwriter at Lloyd's, and INDEMNITY MARINE ASSURANCE CO., LTD.,

Third-Party Defendants.

68 Civ. 4798 (KTD)

Notice is hereby given that the Eastern Marine & Fire Insurance Company, plaintiff above named, and John Pemberton Mosse, an Underwriter at Lloyd's and Indemnity Marine Assurance Co., Ltd., third-party defendants above named, hereby appeal to the United States Court of Appeals for the Second Circuit from Final Judgment No.

43966 entered in the above-captioned action on the 27th day of February, 1976.

HILL, RIVKINS, CAREY, LOESBERG & O'BRIEN
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25 Broadway
New York, New York 10004

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

THE EASTERN MARINE & FIRE INSURANCE COMPANY,

Plaintiff,

-against-

S. S. COLUMBIA, her engines, boilers, etc., et al., 68 Civ. 4798

-and-

OGDEN SEA TRANSPORT, INC., as successor to SEA TRANSPORT, INC.,

Defendant and Third Party Plaintiff,

-against-

JOHN PEMBERTON MOSSE, and Underwriter at Lloyd's, and INDEMNITY MARINE ASSURANCE CO., LTD.,

Third Party Defendants.

----------x

September 16, 1974
10:30 a.m.

BEFORE:

HON. KEVIN THOMAS DUFFY,

District Judge

(Appearances on page 2.)

APPEARANCES:

Messrs. HILL RIFKINS CAREY LOESBERG & O'BRIEN
Attorneys for Plaintiff and Third Party Defendant
BY: ALAN S. LOESBERG, ESQ.
RICHARD WEBBER, ESQ.,
of Counsel.

Messrs. BURLINGHAM UNDERWOOD & LORD
Attorneys for defendants and Third Party Plaintiffs
BY: JOSEPH C. SMITH, ESQ.,
of Counsel.

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THE COURT: I believe there is an application to start off, is that correct?

Is there an application before we start?

MR. LOESBERG: There is no application now, your Honor. My name is Mr. Loesberg. I represent the plaintiff and third party defendant. We have to shorten this trial over the weekend and this morning agreed to a number of stipulations which can be read into the record and which will clarify a number of things and shorten the trial considerably.

If we can read those into the record.

THE COURT: Go ahead.

MR. LOESBERG: The first stipulation is that the pleadings herein are agreed to be amended in the following respects.

The discription of defendant Sea Transport, Inc.

will be amended to read Ogden Sea Transport, Inc., as successor to Sea Transport, Inc.

The description of defendant as corporation of Lloyds in the pleadings and subsequent papers shall be amended to read John Pemberton Mosse, and underwriter at Lloyd's, and Indemnity Marine Assurance Co., Limited.

THE COURT: That stipulation was entered into because you wanted the caption of the case to reflect the real parties and interests, is that correct?

MR. LOESBERG: That's correct, your Honor. The next amended is the counterclaim of Ogden Sea Transport, Inc. as the owner of the SS COLUMBIA and as the successor of Sea Transport, Inc. against Corporation of Lloyd's. Being of the nature of a third party action, Ogden Sea Transport, Inc. and John Pemberton Mosse, and underwriter at Lloyd's, and Indemnity Marine Assurance Co. Limited shall for the purposes of said counterclaim be denominated as a third party plaintiff and third party defendants respectively.

The next one. Plaintiff Eastern Marine and Fire Insurance Company and Third Party Defendants withdraw any claim they may have against any party herein for cargo loss and/or damage.

The reason for that is, your Honor, there was a small cargo claim, a shortage which we don't care to pursue.

The next one is the action is discontinued in its entirety as against Sunda Marine, Inc. and the caption of the case shall be amended accordingly.

THE COURT: Is that discontinuance with prejudice and without costs being assessed against either party?

MR. LOESBERG: That's correct, your Honor.

THE COURT: All right.

MR. LOESBERG: The next stipulation is the Corporation of Lloyd's states that the general average guarantees dated October 12, 1966 were executed on behalf of defendant John Pemberton Mosse, and Indemnity Marine Assurance Co. Limited and on behalf of other underwriters at Lloyd's and British companies participating in the insurance on the cargo carried on board the SS COLUMBIA from Morocco to Korea in July - October 1966 and that the aforesaid John Pemberton Mosse, et al., were real parties in interest with respect to such general average guarantees.

The next stipulation. Ogden Sea Transport, Inc. was at all material times the successor to Sea Transport, Inc. and the owner of the SS COLUMBIA. Ogden was and now is a corporation organized and existing under and by virtue of the laws of the State of Delaware with an office and place of business at 2 Pennsylvania Plaza, New York, New York.

Ogden, and the corporation -- excuse me, this is the next stipulation.

Ogden, and the corporation which it succeeded, were at all material times in the business of the carriage of merchandise by sea for hire.

The next stipulation.

The Eastern Marine and Fire Insurance Company, John Pemberton Mosse and Indemnity Marine Assurance Co. Limited, are an individual and companies engaged in the business, among others, of insuring the obligation of shippers, consignees and owners of cargo to contribute in any proper general average and gave to defendants through John H. Tilden, Limited, a general average guarantee for the payment of all proper general average, salvage and special charge for which the cargo may be liable.

The next stipulation.

The SS COLUMBIA was built at Portland, Oregon in 1945 as a T-2 tanker. She was converted to a bulk carrier at Skaramangas, Greece in 1962 by the inversion of a new mid-body.

The next stipulation.

The SS COLUMBIA lost her rudder on or about August 3, 1966 in the Indian Ocean, about 500 miles east of Aden while en route from Morocco to South Korea with a cargo of bulk fertilizer.

The next stipulation.

The SS COLUMBIA was thereafter towed to Trincomalee, Ceylon and subsequently to Singapore for repairs.

The next stipulation.

In short the Eastern Marine Insurance and Fire Insurance Company deposited $120,000 as security for cargoes proportion of the general average, which general average was declared by the ship owner as a result of the losses of the SS COLUMBIA rudder.

The next one.

Any judgment by Ogden against John Pemberton Mosse and Indemnity Marine Assurance Company Limited shall have the same force and effect as if the judgment had been entered against the corporation of Lloyd's.

The next one.

The weather encountered by the SS COLUMBIA on August 2, 3, 1966, was as set forth in the ship's deck log.

The next one.

The SS COLUMBIA is a vessel registered under the laws of the United States of America and required to be inspected and certified by the United States Coast Guard.

The United States Coast Guard conducted an biennial inspection float at Galveston, Texas required by the Code of Federal Regulations and issued a certificate

of inspection on April 3, 1966.

The next one.

The COLUMBIA completed her last drydocking on March 26, 1965. The American Bureau of Shipping Rules for the classification and construction of steel vessels in effect in 1966 provided at Section 43(12):

"An examination of each class vessel shall be made in drydock at intervals of about 12 months--"

MR. SMITH: One moment. You said, "shall" and the word is "should".

MR. LOESBERG: "Should be made in drydock at intervals of about 12 months, but the maximum interval not to exceed two years."

The next one.

The COLUMBIA was classed with the American Bureau of Shipping. The United States Code of Federal Regulations, 46 CHR, Section 90.40-1 in effect in 1966 provided in pertinent part:

"A. ... exception for extensions as authorized by the commandant (of the Coast Guard), all vessels shall be placed in drydock for examination within the period set forth in this paragraph depending upon the service."

The next one. Each vessel should be drydocked at intervals not to exceed 18 months if it operates in salt

walter an aggregate of more than nine months in the 18 month period since it was last drydocked.

The COLUMBIA fell under the provisions of 46 CHR, Section 49.40-1(a) one period.

MR. SMITH: Excuse me. You quoted that number wrong. It is 71.40-1.

MR. LOESBERG: I'm sorry. He is correct. 19.40-1.

The next one. The general average statement is correct as to the expenses and allocations set forth at page 63-182 provided the general average was proper. The amount and reasonableness of the salvage award are not in dispute.

They are stipulated to, your Honor, and at this time --

THE COURT: Mr. Smith, do you agree with those stipulations?

MR. SMITH: Yes, your Honor.

THE COURT: Who is here representing John Pemberton Mosse?

MR. LOESBERG: We are, your Honor.

THE COURT: You also represent Eastern Marine and Fire Insurance Company?

MR. LOESBERG: That's right, your Honor.

THE COURT: I don't know whether you fellows intend to use depositions. Do you?

MR. LOESBERG: I think he took one deposition, is that right?

MR. SMITH: Yes, we had one deposition, a Coast Guard inspector who inspected the vessel in March of 1965 in Jacksonville, Florida.

THE COURT: Okay, mark it Defendants' Exhibit A.

Do you object to its receipt?

MR. LOESBERG: No objection, your Honor.

xx (Defendants' Exhibit A received in evidence.)

MR. SMITH: Your Honor, there were some exhibits marked on that deposition which I would like to put in evidence at this junction.

THE COURT: All right.

Does your oponent have copies of these?

MR. SMITH: Yes.

THE COURT: Are they all of the exhibits that were discussed in that deposition?

MR. SMITH: Yes, your Honor.

THE COURT: Mark the whole package at Defendants' Exhibit B.

Do you object to the receipt in evidence of these?

MR. LOESBERG: No, your Honor.

xx (Defendants' Exhibit B received in evidence.)

MR. SMITH: Your Honor, for the record they are

Exhibits 1 through 4 marked on Captain Heath's deposition.

THE COURT: Counsellor, somebody has a copy of the log. Right?

MR. LOESBERG: They do.

MR. SMITH: Your Honor, I have the engine log here, but the Master won't be in today.

THE COURT: I am not asking that. Do you have the log here?

MR. SMITH: No, your Honor. It is this high (indicating).

THE COURT: Indicate for the record that his hand was about two feet off the table.

MR. SMITH: About one foot, your Honor.

THE COURT: The problem is in all of these non-jury cases I actually read all the exhibits and all of the depositions and if you fellows can agree as to what's relevant in a foot high stack of paper I would appreciate it very much.

MR. SMITH: Your Honor, I have personally gone through all the deck logs and the engine logs lookinf for an incident that might be relevant to this loss and I found none and I have offered counsel the opportunity, which they have not had time to do at this point, to look through all of these logs to see that there isn't anything there. That's

the only relevance this pile has, except for the day in question and a couple of days before that.

THE COURT: You haven't had a chance, counsellor, to go through this?

MR. LOESBERG: We have only had an opportunity -- he had one month prior to the incident and we haven't had the opportunity for the others.

MR. SMITH: We have the log books back to March of 1965 when the vessel was last drydocked.

THE COURT: All right, the log books will be deemed marked Exhibit C and that way you can go through the log books and see if there is anything relevant and if there is, tell me about it.

xx (Defendant's Exhibit C deemed marked in evidence.)

THE COURT: How many witnesses do you intend to put on?

MR. LOESBERG: Two or three.

THE COURT: And you?

MR. SMITH: I have four, your Honor.

THE COURT: The record should reflect that counsel did not know that this trial was to start on Monday morning until somewhat late on Friday afternoon. Under the circumstances, whatever we can put in today we will put in and hopefully -- do you have your two witnesses here?

MR. LOESBERG: Your Honor, we are in the nature of-- I have one here, but he cannot testify. I only have two experts -- or three experts and they can't testify until he puts in some facts.

We are in the nature of this case -- I was going to offer two other exhibits which are the contract of carriage -- and we have already mostly agreed to the nature of the case which show that it was Subject to the Carriage of Goods by Sea Act -- the bills of lading and the charter party and we take the position under the Carriage of Goods by Sea Act that he has to explain the loss of the rudder and show due diligence and until he goes forward it is an unexplained loss for which he is not reimbursable.

THE COURT: Counsellor, do you have any witnesses around?

MR. SMITH: I have witnesses who are ready to testify Friday.

THE COURT: How many do you have?

MR. LOESBERG: I have two here this morning.

THE COURT: Do you want to mark those documents in evidence?

Do you object to these, the charter party and the bills of lading?

MR. SITH : No objection. I would have put it in

myself.

THE COURT: All right.

MR. LOESBERG: Let me say this.

Do you have better copies?

MR. SMITH: I am sorry, I don't, but I don't think there is any dispute as to what the clauses are.

MR. LOESBERG: There is no dispute.

The plaintiffs offer as an exhibit -- there are two bills of lading.

THE COURT: That's Exhibits 1 and 2. Mark them in evidence.

xx (Plaintiff's Exhibits 1 and 2 received in evidence.)

MR. LOESBERG: A charter party dated April 29, 1966. That is the next exhibit.

THE COURT: All right, the charter party dated April 29, 1966. Do you object to that?

MR. SMITH: No objection.

THE COURT: All right, the charter party is Exhibit Number 3.

xx (Plaintiff's Exhibit 3 received in evidence.)

MR. LOESBERG: We do have one more. It is another charter party, a subsequent one.

MR. SMITH: I don't think that's even relevant

because the bill of lading states that the charter party for the 29 is incorporated and this is actually back to back.

MR. LOESBERG: I think we should have it just as a matter of good order.

THE COURT: Sure, go ahead. Exhibit 4.

MR. LOESBERG: This is the charter party dated June 8, 1964.

THE COURT: Do you object to the admission of the charter party?

MR. SMITH: No, your Honor.

THE COURT: You do object to its relevance, though?

MR. SMITH: Yes.

THE COURT: All right, the record should show that.

xx (Plaintiff's Exhibit 4 received in evidence.)

THE COURT: Mr. Smith, call your first witness.

Do you have anything else that I should know about?

MR. SMITH: Not at this time, your Honor.

THE COURT: Call your first witness.

xx J O H N A. C A L L E N, called as a witness by defendants and third party plaintiff, having been first duly sworn by the Clerk of the Court, testified as follows:

xx DIRECT EXAMINATION

BY MR. SMITH:

Q What is your occupation, Mr. Callen?

A Marine Engineer with a chief engineer's license.

Q In what country are you licensed?

A The United States.

Q By whom in the United States?

A By the U. S. Coast Guard.

Q When were you first licensed as an engineer by the United States Coast Guard?

A In 1949.

Q That was a third assistant engineer's license, wasn't it?

A Yes. Limited steam license.

Q When you say --

A Unlimited horse power.

Q When did you receive your chief engineers license?

A In 1962.

Q Prior to 1949 how were you employed?

A In the U. S. Navy in the engine room as a -- I was discharged as a first class machinist mate.

Q Prior to that, prior to being a first class machinist mate, what was your occupation?

A Since I had gotten out of high school, I went into

the Navy, I went to a Navy school, electrical school, and I was assigned to a ship in the engine room where I served all of my time in the Navy of six years.

Q As a machinist mate in the Navy, were you required to do machinist work?

A I was required to do all types of machinist work. I was in charge of the engine room, leading petty officer.

Q Since 1949 have you been continuously employed as an assistant engineer and chief engineer on American flag vessels?

A Yes, sir.

Q When did you first start sailing as a chief engineer? You said you got your license in 1962.

A In 1963.

Q When were you first employed by the defendant, Ogden Sea Transport?

A On July 3rd, 1965.

Q Had you ever been employed by Ogden before that time?

A Yes. I was employed temporarily to take a ship from Tampa to Baton Rouge.

Q How did you obtain that job?

A My Engineer's Association called me and asked me to take this ship from Tampa to Baton Rouge.

Q How did you obtain your job as chief engineer on the COLUMBIA?

A The Engineer's Association called me and notified me that there was a job open on the COLUMBIA.

Q What is the name of the Association that you belonge to?

A District 2 Marine Engineers Beneficial Association, 650 Fourth Avenue, Brooklyn.

Q How long did you serve on board the COLUMBIA?

A Approximately 18 months.

Q Have you ever been employed on the COLUMBIA since then?

A No, sir.

Q Haveyou ever been employed on any other Ogden vessel since then?

A No, sir.

Q Have you examined the log book for the COLUMBIA for the period from the commencement of your employment as chief engineer on the vessel until August 3, 1966 when the rudder was lost?

A The engine log?

Q The engine log.

A Yes.

Q When did you do that?

A I examined it last night.

Q Have you found anything in the log that would indicate the COLUMBIA suffered a casualty to her rudder prior to October 3, 1966?

A None at all.

Q Do you recall what the practice was with respect to the log book and the disposition of the pages of the log book when you were chief engineer?

A Yes, sir.

The log book had two carbon copies, one of which was -- for each day, one of which was sent into the office, the company office.

Q I would ask you to examine this group of log pages and see if you can identify those.

Are those the onesyou examined last night?

A Yes, sir.

Q Do they cover the period of your employment?

A Yes, sir.

MR. SMITH: Your Honor, I would like to have that marked as an exhibit just for identification purposes.

THE COURT: All right.

MR. SMITH: With the same offer of examination.

xx (Defendant's Exhibit D marked for identification.)

Q While you were employed as chief engineer on board the COLUMBIA, what inspections, if any, did you personally make with respect to the vessel's rudder, her rudder stock and the pintle?

A Prior to each voyage or after a voyage of any magnitude, I always made it a point to inspect the rudder post, the pintle and that part of the propeller that was out of the water from the dock.

Q When you say the rudder post, is that synonymous with rudder stock?

A Yes, sir.

THE COURT: Pardon me, counsellor, just for my own benefit, the rudder stock or rudder post, is that part of the ship's gear which is attached to the rudder and goes from the rudder inside the ship so that it can be turned, is that correct?

THE WITNESS: Inside of the ship, but I am referring to it as the part that also comes down and has a palm and is bolted onto the top of the rudder.

THE COURT: Okay. It is bolted on. Where is the pintle?

THE WITNESS: The pintle -- there is two. One is at the top, which is approximately two feet below the palm of the rudder stock and the other one is in the extended part of the skag, which is the bottom bearing for the rudder.

The top and the bottom bearing.

THE COURT: The top and the bottom bearing of the rudder is where the pintle is, correct?

THE WITNESS: Yes.

THE COURT: Before we go further we have Defendant's Exhibit E for identification.

Can you point out exactly where it is on this diagram?

THE WITNESS: The top one is here and the bottom one is here (indicating) and the gudgeons fit into the pintles.

xx (Defendant's Exhibit E marked for identification.

THE COURT: Is this going to be introduced?

MR. SMITH: Yes.

THE COURT: Do you have any objection to it?

MR. LOESBERG: No, your Honor.

THE COURT: All right, Defendant's Exhibit E will be received in evidence.

xx (Defendant's Exhibit E received in evidence.)

THE COURT: It is a blueprint dated June 25, 1943 apparently done at the Ocean Shipbuilding and Drydock Company, Chester, Pennsylvania. It is drawing number 390-703-A It purports to show the rudder section of a ship. Does it

show anything else?

MR. SMITH: It shows the rudder section and the gudgeons, your Honor.

THE COURT: I am sorry.

MR. SMITH: Because the gudgeons are attached both at the top and bottom.

THE COURT: All right.

Q Now, would you show the Court approximately what you could see when you made your inspection that you described from the dock.

THE COURT: Not only do you have to show me, I want to make sure all the lawyers see it. Okay, go ahead.

A The question you asked does not give me any time. At normal light ship -- normally when the ship is light you will see at least half of the screw. This part will be out of the water.

THE COURT: Indicating the top part of the rudder, is that correct?

THE WITNESS: Yes.

MR. LOESBERG: Your Honor, I don't like to interrupt the witness, but may I have an objection. I know what is normal procedure. Isn't it pertinent if we know if he did it and at what instances he did it?

THE COURT: I assume we are going to get to it.

A You asked me -- I am answering the question.

THE COURT: Answer the question that was last put to you, all right?

THE WITNESS: Yes.

THE COURT: Go ahead.

A You will inspect the rudder, the rudder stock and the top gudgeon and pintle.

THE COURT: But you can't see the bottom?

THE WITNESS: No, sir.

THE COURT: Go ahead.

THE WITNESS: Not unless the water was very clear, and you wouldn't make an inspection of it.

THE COURT: Mr. Callen, we have both been around harbors, particularly where they are unloading. I haven't seen one that is quite that clear. Have you?

THE WITNESS: Yes, sir. May I answer it?

THE COURT: Sure.

THE WITNESS: After this ship lost the rudder we were at sea and we were looking -- the way the sun was shining we couldn't see from the ship and we went down -- the first assistant went down the ladder and he looked and he could see a white plastic bearing which is in the bottom gudgeon -- bottom pintle.

THE COURT: He told you that, right?

THE WITNESS: Yes, sir.

THE COURT: Did you get a chance to see it?

THE WITNESS: I saw it after that.

THE COURT: You went down also?

THE WITNESS: After he came up I crawled down on the ladder and looked down and I could see the skag and appeared to be intact.

THE COURT: That's in the middle of the Indian Ocean, though, right?

THE WITNESS: That would be in the Indian Ocean about the second day after we lost the rudder.

THE COURT: All right.

Go ahead, counsellor.

Q What inspections, if any, were performed by vessel personnel under your supervision?

THE COURT: When?

THE COURT: Just generally at this point.

THE COURT: All right, go ahead.

A The inspection that's normally made when we are at sea -- the oiler makes a round once an hour and checks in the engine room. The engineer on watch makes the round when he comes on watch and checks the steering engine. The first assistant checks once a day in the morning on his morning round. I normally make a round at 8 o'clock at night

and I check the steering engine room. That would be the part of the rudder stock in the engine, in the steering engine room.

Q Did any of your personnel prior to the casualty on August 3, 1966 report any difficulty with the steering engine, the rudder stock or the rudder?

A No.

MR. LOESBERG: Objection , your Honor, as hearsay.

THE COURT: Well, it's kind of negative hearsay, but I will let it in. Go ahead. He said no.

MR. SMITH: These are reports, your Honor, that are made in the normal course of his business.

THE COURT: I understand. I let it in. Don't argue with me there.

Q When did you personally last make an inspection of the rudder before the casualty on August 3, 1966?

A To the best of my knowledge it was on the 16th of July and it could have been on the 15th, but it was the 15th or the 16th and it's listed in the log. I was on the dock making an inspection with the first assistant. He had cleaned a heavy concentration of shell from the overboard discharging line.

While we were -- after we had inspected this I inspected the rudder and approximately, to my memory two feet

of the top of one propeller blade was exposed. This is the best of my memory. At this time the captain, the agent and the steward approached it first and I on the dock and asked me if I wanted to go to Casablanca with them to buy stores. I am not sure if -- I believe the captain walked aft with me while I was inspecting this rudder.

Q Do you have any recollection of the weather the COLUMBIA encountered after she left Suez on the voyage from Safi to Puson?

A Would you repeat the question, please.

Q Do you have a recollection of the weather that the COLUMBIA encountered after leaving Suez on the voyage from Safi to Puson?

A To the best of my recollection coming down the Red Sea was as it always is, hot and still. After we rounded the point -- after we passed Africa, we were catching the monsoon winds blowing from the southwest to the northeast and they were a steady, heavy wind and sea striking the rudder at -- almost quartering, I would say.

THE COURT: At this time the ship was loaded, though, right?

THE WITNESS: Yes, sir, it was loaded.

THE COURT: And when the ship is loaded the rudder iscompletely in the water, is that not correct?

THE WITNESS: Yes, sir, it is under the water, but the seas -- the steady wind and seas were blowing from the southwest to the northeast.

THE COURT: All right.

THE WITNESS: If the log were checked you will find -- the deck log, you will find that we were making approximately 4 knots an hour after our breakdown and we were still in the water.

We were making 4 knots an hour towards Bombay.

Q Now, Mr. Callen --

MR. LOESBERG: Objection.

THE COURT: Yes, the extra added part.

MR. LOESBERG: I move to strike that, and also, your Honor, I don't like to be harrassing, but the foundation of Mr. Smith, this man is an engineer and I assume most of the time he was in the engine room and if he was out there seeing it I would like to know about it.

THE COURT: First of all the extra added bit will be stricken.

As to whether he gets out there, counsellor, I am sure if you were trapped in an engine room for half a day, you would get out to see what it was like out, the sunlight or whatever it might be.

THE WITNESS: At noon each day I am given a slip

from the deck department --

THE COURT: Just hold on.

Q Hold on, there is no question right now.

THE COURT: Go ahead and ask the question.

Q Did you have any evidence at any time prior to the assault on August 3, 1966 that there was a malfunction or a defect in the rudder or the pintles or the rudder stock?

A None at all.

Q Did you examine the rudder stock and whatever was left of the rudder at Singapore?

A Yes, I did.

THE COURT: Is it agreed that the ship was placed in drydock at Singapore?

MR. WEBBER: That's correct, your Honor.

MR. SMITH: I hope you don't mind me jumping over to this, your Honor.

THE COURT: I don't mind. Go ahead.

MR. SMITH: I am trying to save a little time.

THE COURT: It's quite all right.

MR. SMITH: Your Honor, I had previously furnished these three photographs to counsel for the plaintiff.

THE COURT: Fine, mark them.

Do you have the three photographs?

Just make sure that they are the same ones you have.

MR. LOESBERG: They are the same ones we have.

MR. SMITH: I would like to staple those together and mark them as one exhibit, your Honor.

THE COURT: Sure.

MR. SMITH: They will be identified, your Honor, as Defendant's Exhibit F.

xx (Defendant's Exhibit F marked for identification.)

THE COURT: Mr. Loesberg, do you object to the receipt in evidence of Defendant's Exhibit F?

MR. LOESBERG: No, your Honor. He identified them? He is going to identify them now.

THE COURT: Mark them into evidence now.

xx (Defendant's Exhibit F received in evidence.)

THE COURT: Defendant's Exhibit F consists of three photographs stapled together.

Tell us what the first photograph is, the top one. Did you hear me?

THE WITNESS: Yes, sir.

THE COURT: All right.

THE WITNESS: This is taken from the bottom, below the pam flange of the rudder.

THE COURT: When?

THE WITNESS: Apparently in Singapore. That's what I see. It's the same as what I saw.

THE COURT: Okay.

THE WITNESS: To the best of my memory.

Q Would you just point out to the Court what that view would be on the drawing here.

THE COURT: Which is Defendant's Exhibit E.

A It would be this part (indicating) of the rudder gone and you are looking from the drydock upward viewing the bottom of the pam.

THE COURT: Mr. Callen, approximately how far would the bottom of the drydock be from the area which is toward the top or the pam of the rudder, how far up would that be?

THE WITNESS: You mean from the bottom of the ship?

THE COURT: No, the bottom of the drydock.

What I am asking, sir, is did somebody have to get down on his knees to take this picture or --

THE WITNESS: There is a staging belt all the way up in here (indicating) and I was up there and that's where the workmen were.

THE COURT: But could you walk under this particular item which is shown in the first?

THE WITNESS: Yes, sir. Definitely.

THE COURT: Go ahead.

THE WITNESS: This was, well, 25 -- 24 feet.

THE COURT: All right.

Q Was there any damage to the pam or the pam bolts?

A None at all in any way.

MR. SMITH: I have no other questions, your Honor.

THE COURT: All right, I show you the second photograph, which is included within Defendant's Exhibit F.

Tell me what that is, please.

THE WITNESS: It's an upside-down view of the rudder stock and the pam.

THE COURT: Okay, what's the third picture?

THE WITNESS: I can't tell.

THE COURT: Okay.

MR. SMITH: Your Honor, we could remove that.

THE COURT: Leave it in. I think I know what it is.

All right, gentleman, we will take a break right now.

I would appreciate if the three of you would come in with me, all right?

(Recess.)

THE COURT: Mr. Callen, come on back up here.

THE COURT: Mr. Callen, was the SS COLUMBIA a single screw or a twin screw vessel?

THE WITNESS: Single screw.

THE COURT: That's the way I read it on the diagram.

I just wanted to check.

xx CROSS EXAMINATION

BY MR. LOESBERG:

Q Mr. Callen, you were talking about your inspection, I think that was in Safi?

A Yes.

Q Is this one of those inspections that you walk up to the pier with the chief mate and somebody turns over the rudder and you see if it turns and what we call a normal routine inspection at the commencement of the voyage?

A No. The chief mate was not on the dock. He had nothing to do with it. I have never inspected the screw with the chief mate.

Q Is this a normal routine inspection that you make at the commencement of the voyage or after you leave a port --

A Yes.

Q That you go aft and take a look when somebody turns over the propeller?

A Normally I go on the dock before a voyage or after a voyage of any magnitude when the opportunity -- when I had the opportunity to check the screw and the rudder.

Q Would this be an inspection that would be recorded in your engine room log book?

A No, sir, it isn't.

Q What's the purpose of the log book?

A The purpose of the log book is to write the routine data of operation of the engine.

Q Isn't it a record book to be kept, to include inspections and anything?

A It's impossible -- if you look at the log book, it's impossible to write everything that we do in the engine room in that log.

Q But aren't inspections supposed to be noted in the engine room log book, or if it's a deck log in the deck log book?

A Not necessarily.

Q With respect to the rudder, is there an inspection plate over that that covers anything?

A There is inspection covers on the rudder which are welded shut.

Q Would you know what they cover?

A A void.

Q Nothing else?

A I am not --

THE COURT: I am afraid we are not working on the same wave length here.

The construction of the rudder, inside of it is hollow, is that correct?

THE WITNESS: Yes, sir.

THE COURT: And there are ribs on the inside also?

THE WITNESS: Yes, a reinforcement.

THE COURT: When you talk about an inspection cover you are talking about that part which you can cut off and look inside to check on the reinforcement and also on metal stress and wear, is that correct?

THE WITNESS: Yes, sir. As far as I know that's what he is asking.

THE COURT: I don't believe it is. Go ahead.

MR. LOESBERG: I am sorry.

Q Do you know if any part of the pintles are covered by the inspection plate?

A To my knowledge, there is no cover on the pintles.

Q There is none?

A There is a cover which normally holds the bearing in there, but I wouldn't consider this to be an inspection plate.

Q Are you familiar with this rudder that was on this ship, the construction of it?

A Well, I had never built one, no, sir.

Q Excuse me, I didn't hearyou.

A I have never built one.

Q I didn't mean that.

A I have never worked in building rudders at all.

Q Had you ever seen this rudder out of the water except for the shipyard at Singapore? I mean out of the water when the ship was in drydock?

A The rudder that broke off, I have never seen all of it.

Q How many years did you go to sea prior to your joining this company that owned the COLUMBIA?

A How many yeras have I worked at Sea?

Q Yes.

A Since 1941.

Q And that is you came up from --

A I came up from the bottom.

Q How many ships were you on prior to the COLUMBIA that lost its rudder?

A How many ships have I been on?

Q No. Excuse me. Maybe you didn't hear me.

During your sea-going profession prior to the time that the rudder was lost on the COLUMBIA, how many times can you recall where you were on a ship either as an engineer or wiper, where a ship lost its rudder similar to this?

A I have never heard of one.

Q Have you been out in bad weather before?

A I have been going to see for 33 years and I have

seen many storms, yes.

Q You have crossed the Atlantic many times during the winter?

A I ran steady on the Atlantic.

Q And you get bad weather out there?

A Yes.

Q In fact you can expect bad weather when you go to sea?

A Yes, sir.

MR. LOESBERG: No further questions.

MR. SMITH: I just have one question, your Honor.

xx REDIRECT EXAMINATION

BY MR. SMITH:

Q Mr. Callen, you were aware of the type of weather that the vessel was encountering after she left or passed Aden, is that correct?

A After it passed Aden and from my rough knowledge of the map of Africa, it seemed to me after we passed the point on Samoliland the monsoon was hitting our rudder.

Q Now, the weather that you personally observed the vessel encountering during that period of time after the vessel passed the point that you described and the time she lost her rudder, was the weather that you observed during that period of time -- or I should say could that weather have caused damage to a seaworthy vessel?

MR. LOESBERG: Objection to the form of the question, your Honor.

THE COURT: I will permit it. Go ahead.

A Without any doubt, yes, I would say it could have caused damage to a seaworthy vessel.

MR. SMITH: No other questions.

xx RECROSS EXAMINATION

BY MR. LOESBERG:

Q Mr. Callen, do ycu know what the log book says about August 3 so far as weather conditions were concerned?

Did you hear the first question?

A No.

Q Do you know what the log book says about the weather on the 3rd of August, or the date that the rudder was allegedly lost?

THE COURT: We are talking about the deck log at this point.

A I do not know what the deck log said. I know from my reading the engine log and from my recollections only.

Q Do you know what course the vessel was steering on on the day in question?

A I have no idea what the Beaufort scale is.

Q That was course.

THE COURT: The course.

THE WITNESS: The course?

THE COURT: Yes, what heading was the ship on.

A The vessel was heading slightly north of east.

Q Where were the seas coming from on the 3rd? What direction were they coming from?

A On the 3rd?

Q On August, yes.

A In the Indian Ocean they were coming from the southwest on the 3rd of August.

Q On the date in question, what watch were you standing?

A Chief engineers don't stand a watch.

Q Excuse me, you have four engineers and you are not a watch stander, is that right?

A That's right. You have five engineers.

Q Excuse me?

A You have five engineers.

Q In the morning of the day you lost the rudder, what time did you get out of your bed in the morning?

A I couldn't answer that question. I don't know.

Q Do you remember if you went down in the engine room that day to check the engine room with any of the engineering officers on watch?

A No, I couldn't say that I did. I don't know.

Yes, I can say that I did. Definitely I checked the engine room that day because I definitely went down there at approximately 1630 when the first assistant called me in the captain's room and told me that he was having difficulty.

Q That was at 4:30 in the afternoon?

A Yes, sir.

Q I am speaking about the morning.

A I can't answer this question because I don't remember. All I can do is give you an estimation.

Q Well, it was 10 years ago. I guess that's a cause why you can't remember and it's difficult to remember everything that happened that day, isn't it?

A It is difficult unless I had reason to remember it, yes, sir.

Q With respect to the statement you made that it could cause damage to a seaworthy vessel, do you base that on your experience only?

A Yes, sir, I do.

Q How do you relate that to the fact that you said you have been going to sea since 1951 and that you have encountered heavy weather a number of times and you have never been on a vessel that lost its rudder similar to this?

A The question was not asked if I thought the rudder was lost because of that. The question was asked if

I thought that the sea could cause damage and I know it can cause damage.

Q To what?

A To any seaworthy ship.

Q What type of damage are you speaking about?

A Damage in general.

Q Do you mean to things on deck like railings?

A Various things, yes.

Q Is there any record of the log book before the rudder was lost that there was any structural damage on this vessel?

A Not to my knowledge.

Q I just want to straighten this out to see if I am thinking with any clarity. You said the question was posed to you whether or not the damage could occur during this kind of weather to the ship, is that right, even if it were a seaworthy condition, is that right?

THE COURT: No. The question was could damage be inflicted by this kind of weather to a seaworthy ship and the answer he gave was yes.

Now, he has indicated that the damage he is referring to is damage generally.

It could be practically anything.

MR. LOESBERG: No further questions to this witness,

your Honor.

THE COURT: Do you have any more?

MR. SMITH: If I could be permitted to ask one more, your Honor.

THE COURT: Sure, go ahead.

Once he steps down you are finished with him, no.

[R-DIRECT]

xx RECROSS EXAMINATION

BY MR. SMITH:

Q Mr. Callen, do you have any opinion as to how the rudder was damaged on the COLUMBIA on August 3, 1966 based on your experience as a chief engineer with 30 years of experience?

MR. LOESBERG: I object, your Honor, because the proper foundation has not been laid. He said he never constructed one, he has only looked at them and on various grounds.

THE COURT: There are a whole parcel full of grounds that you can object to it. However, counsellor, you have got to recognize this as a non-jury case. I know what kind of weight to give to it. Go ahead and answer the question.

A Definitely in my opinion the southwest monsoon is what caused the rudder to break.

MR. SMITH: No other questions.

xx REDIRECT EXAMINATION

BY MR. LOESBERG:

Q Do you rule out any other cause of the rudder being lost besides the so-called weather?

A You are asking me my opinion?

THE COURT: That's what he is asking you, your opinion.

A In my opinion the rudder was lost due to the southwest monsoon breaking the rudder.

Q Have you ever been on any other ship where this occurred?

A I have never been on another ship that lost a rudder, no, sir.

Q Then how do you explain this time under conditions that you have experienced before and you have been on other seaworthy ships that it could have caused the rudder to break?

A Normally, the only way that I can answer the problem of any engineering mishap is by my experience and by reading, checking the blueprint and giving my judgment.

Q How could you give your experience when you have been out in this type of weather before on other ships and its never happened before; what experience can you lend to this?

A Because I could feel the current of the seas hitting this rudder on the side.

Q Isn't a rudder supposed to be designed on a ship to be seaworthy enough to meet the type of weather that was demonstrated in the log book or that you had?

A Yes, it's supposed to be designed to withstand this.

Q Then do you rule out any other cause that may have caused this rudder to be lost or contributed to it?

A I could not answer this question, I don't believe, because something could cause it.

Q There could be other causes besides the weather, isn't that true?

A Certainly it could be.

MR. LOESBERG: No further questions.

THE COURT: All right, Mr. Callen, let's take a look at Defendant's Exhibit F, the first picture.

THE WITNESS: Yes.

THE COURT: On the righthand side of that, right here, you will notice what appears to be a piece of metal sheared off, right?

THE WITNESS: Yes, sir, all the way across.

THE COURT: Right here.

THE WITNESS: Yes, sir, it's sheared there.

THE COURT: That has been caused by metal fatigue?

THE WITNESS: Yes, it could be.

THE COURT: Okay. That's all.

Thank you very much, Mr. Callen.

(Witness excused.)

THE COURT: Next witness.

xx S A L V A T O R E P U M A, called as a witness by the defendants and third party plaintiffs, having been first duly sworn by the Clerk of the Court, testified as follows:

xx DIRECT EXAMINATION

BY MR. SMITH:

Q By whom are you employed, Mr. Puma?

A American Bureau of Shipping.

Q In what capacity?

A Assistant manager, reports.

Q Did you at our request bring with you today the American Bureau of Shipping record for the SS COLUMBIA?

A Yes, I did.

Q Would you refer to the report number SH 6881.

A Yes, sir.

Q By whom was that report made?

A William Nobel, Jr., Surveyor.

Q Is Mr. Nobel still with the American Bureau of Shipping?

A No, sir, he is deceased.

Q Is the report number SH 6881 a report that's required to be made by the American Bureau of Shipping in the normal course of its business in the classification of vessels?

A Yes, sir.

MR. SMITH: Your Honor, I would like to have this marked as an exhibit, which will be G, I believe.

MR. LOESBERG: Are you going to offer it now?

MR. SMITH: Yes.

THE COURT: He is going to mark it first.

MR. LOESBERG: That's what I thought.

xx (Defendants' Exhibit G marked for identification.)

THE COURT: Counsellor, do you represent that Defendants' Exhibit G marked for identification is a copy of the report maintained by this witness, Mr. Puma?

MR. SMITH: Yes, your Honor.

THE COURT: Show it to your opponent, please.

MR. LOESBERG: I have seen it. We don't object to the authenticity of it. We do object that I assume he is putting in a business record when there is a lot of things that were supposed to have been done, et cetera, with no right to

cross examine the man that made it.

THE COURT: Counsellor, I assure you I cannot make arrangements for you to examine the man that made this report.

All right, mark it in evidence.

xx (Defendants' Exhibit G received in evidence.)

MR. SMITH: Your Honor, I won't ask the witness any questions about the document because I believe it speaks for itself.

THE COURT: I have one problem. Do you have a time stamp on your copy?

THE WITNESS: Received?

THE COURT: Yes.

THE WITNESS: I believe June 7, 1965. Just a minute. No, pardon me. April 26, 1965.

THE COURT: All right.

Do you have any other questions of this witness?

MR. SMITH: I believe I might have. I just want to check.

Q In connection with the drydocking at Jacksonville, which was completed on March 26, 1965, was there a certificate of seaworthyness issued?

A No, sir.

THE COURT: The answer was no?

THE WITNESS: No, sir.

THE COURT: All right.

Q Was there a certificate of seaworthiness existing on the vessel at the time?

A It all depends on what you mean by a seaworthy certificate.

A seaworthy certificate is only issued at the time a vessel is damaged and the certificate must attest to the fact that the vessel is seaworthy to proceed to another port for repair.

In this case the survey attended not for damages but for periodic surveys.

Q What does the last paragraph of Exhibit G mean?

THE COURT: Let's make sure that everybody knows what you are talking about. Are you talking about paragraph 19?

A The concluding paragraph?

Q Yes, the concluding paragraph.

THE COURT: Hold on. Let me see it.

All right, go ahead.

Q What does that mean?

A This is a normal concluding paragraph at the conclusion of a survey. It means that the vessel's classification remains -- the status remains the same. there are no --

if their periodic surveys were extensively overdue, the survey may chose to eliminate or omit that statement at the close of the paragraph.

Q What was the classification of the COLUMBIA?

A At the time it was MALTESE CROSS, A1, Sir Kelly, MALTESE CROSS AMS.

Q What does that mean?

A That is the highest classification that we allow for a vessel of this type. It means it was build under the supervision of the American Bureau of Shipping during original construction and that she remains in the highest class.

Q Would you look at your record again now and tell the Court if there were any outstanding requirements by the American Bureau of Shipping as of July 18, 1966.

THE COURT: I'm sorry, would you read that question back, please.

(Question read.)

THE COURT: I think we all know what the word requirements mean, but let's make sure if there's somebody else called upon to review this record they know what it means.

All right?

Q Do you know what a requirement is?

THE COURT: When used in this sense.

A I assume you are referring to outstanding requirements as any overdue surveys. I don't think you mean outstanding recommendations.

Q Outstanding recommendations or outstanding surveys. Either one. Or both.

A I can't answer that at this time without going through the record.

THE COURT: All right, go through it.

A Well, can I ask a question?

Are you referring specifically to this report as of this report or --

Q We are specifically to as of July 18, 1966, which was the date that the COLUMBIA sailed from Safi on a voyage to Puson.

A It's difficult to do that without some extensive work.

THE COURT: How long would it take you?

THE WITNESS: It may take an hour or more.

THE COURT: Do you have anything else to ask of this witness?

MR. SMITH: That's all, your Honor.

MR. LOESBERG: We can cross, but we won't go to this point and he can come back later.

THE COURT: Then he can have lunch and during lunch time he can go through it.

xx CROSS EXAMINATION

BY MR. LOESBERG:

Q Sir, do you know -- the survey that's in evidence now, do we have that here?

THE COURT: It is G. I have it right here.

Q Are you familiar with this clause down here and could you kindly read it?

A What clause are you referring to?

THE COURT: The printed clause at the bottom of the first page of Exhibit G. "This report is".

A I assume that this is a statement disclaiming the Bureau's responsibility for any inaccuracy in the report.

Q Or negligence?

A Negligence on behalf of -- yes.

Q Do you know the reason it was put in there?

A I assume so --

THE COURT: Do we have to?

MR. LOESBERG: All right, I withdraw it.

Q Sir, I want you to tell me if you know how many ships that are classied with the high Maltese Cross in the American Bureau of Shipping have, one, be sunk at sea and, two, have sustained serious water damage in their hulls or,

three, have lost their rudder.

A No, sir, none. I can't answer either of the three questions.

Q Because you are not familiar with it or --

A I am not familiar with it.

Q What's your function at the Bureau?

A As I said, assistant manager of the reports section.

Q You are not a surveyer?

A No, sir.

Q Do you have any knowledge of any ships sinking that have been with the highest maltese cross?

A I can say that they have.

Q I have just an identification of two other survey reports in your file. If you could pull out reports, sir, NN5452 dated Newport News, dated April 4, 1964, and then report NN 5451 dated April 4, 1964, for us.

MR. LOESBERG: I have copies of it that have been supplied me, your Honor. I marked them and I am having a hard time reading them.

We can offer these, your Honor, as exhibits, if the Court will take judicial notice that the markings are not there.

THE COURT: The markings are not yours?

MR. LOESBERG: No.

THE COURT: I understand.

MR. LOESBERG: There is no objection and we offer them.

THE COURT: First we are going to have them marked as Plaintiff's Exhibit 5 for identification and 6 for identification.

xx (Plaintiff's Exhibits 5 and 6 marked for identification.)

THE COURT: Mr. Smith, no objection?

MR. SMITH: No.

MR. LOESBERG: Then we offer them in evidence.

xx (Plaintiffs' Exhibits 5 and 6 received in evidence.)

THE COURT: All right, Mr. Puma, unfortunately you have got to be back after lunch. During the interim, though, would you be good enough to look through the file and check into problems that were raised here. All right?

THE WITNESS: Yes.

THE COURT: All right, you may step down.

(Witness temporarily excused.)

THE COURT: Do we have another witness, counsellor?

MR. SMITH: That's all I have right now.

THE COURT: All right, it's two minutes before 12, have a pleasant lunch. Be back at 2 o'clock.

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MR. SMITH: Your Honor, I probably will not have a witness this afternoon. I have these two other witnesses to put on both on Wednesday. I am thinking about the possibility of putting one witness on this afternoon. If I can get him into the courtroom I will and I will do that during lunch hour.

THE COURT: Are you suggesting that you won't be able to get him?

MR. SMITH: It's possible I won't be able to get him.

THE COURT: All right, let's be reasonable about it.

Could you have him on Wednesday?

MR. SMITH: Yes, we could have him on Wednesday, as far as I know at this point.

THE COURT: All right, and you won't be prepared to go with anyone, then, tomorrow?

MR. SMITH: No.

THE COURT: Mr. Loesberg, how many witnesses do you expect to have? Are they here?

MR. LOESBERG: I have one here that's observing as an expert, Admiral Patterson, but he can't testify to anything because there is nothing in the record yet to testify to.

They will be short witnesses, they won't be that long. Two experts at most, maybe three. My case will be no more than a half day, if that.

THE COURT: Make up your mind right now. Is it going to be two or three?

MR. LOESBERG: I would like to guard on the third witness just in case.

MR. WEBBER: Your Honor, if I could explain the difficulty here, the third witness to whom Mr. Loesberg is referring, is a gentleman from the United Kingdom and thus far we have not been able to get in touch with this witness. This is the reason Mr. Loesberg is referring to two or three witnesses. It depends on whether we can locate him and get him here.

THE COURT: My problem is not that, counsellor. My problem is this: If you have two experts testifying to the same thing and then you add a third expert who is going to testify to the same thing, you are just adding icing to the cake and it may be unnecessary. I am not foreclosing you at all. You can have him if you want, but just think about it in that sense.

All right, I'll tell you what. You gentlemen were very, very accommodating to the Court in coming in this morning and starting this case. I recognize all of you as

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being gentlemen.

Maybe we can finish off this witness, Mr. Puma, by you having Mr. Puma go through it and telling you whther or not there is any recommendations or requirements outstanding as of the start of this particular voyage and then you can come back and stipulate.

Either it's in that record or it's not. That way you could have this afternoon and tomorrow off.

MR. SMITH: It suits me.

MR. LOESBERG: I have no objection.

THE COURT: All right, let's do it that way.

THE COURT: All right, gentlemen, I will see you back here on Wednesday morning.

All right, the same courtroom at 10 o'clock.

(Adjourned to Wednesday, September 18, 1974 at 10 a.m.)

THE EASTERN MARINE & FIRE INSURANCE COMPANY,

56

Plaintiff

68 CIV 4798 KTD

-vs.-

S.S. COLOMBIA, her engines, boilers, etc., ORIENTAL EXPORTERS, INC., and OGDEN SEA TRANSPORT INC., as successor to SEA TRANSPORT, INC. & OGDEN SEA TRANSPORT, INC.,

Third Party Plaintiffs

- against -

JOHN PETERSON HASSE, an underwriter at LLOYDS & INDEMNITY MARINE ASSURANCE CO., LTD.,

Third Party Defendants

September 18, 1974
10 a.m.

(Present: Mr. Loesberg, Mr. Webber and Mr. Smith.)

(Trial resumed: Second day.)

THE COURT: I think we ought to start off with a stipulation concerning Mr. Puma.

You will recall as we were leaving on Monday I suggested to you gentlemen that you could go through the file and figure out if there is anything there.

Do we have such a stipulation?

MR. SMITH. Yes, your Honor.

It is stipulated by the parties that if Mr. Puma were to testify as to the contents of the file, he would

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testify that there were no outstanding American Bureau of shipping recommendations or survey for the Colombia on July 18, 1966.

THE COURT: All right.

MR. SMITH: Your Honor, I must apologize to the court. My witness, coming from the Persian Gulf, hasn't arrived yet. He is supposed to call me as soon as he gets in. I left word to have a message sent to the court. We may be able to put him on this afternoon.

THE COURT: Well, if we can't get him this afternoon we will get to him tomorrow, whenever he gets in.

MR. SMITH: I have for my first witness this morning, if your Honor please, Captain Meyer, the master of the Colombia.

THE COURT: All right.

CAPTAIN FREDERICK R. MEYER, called as a witness for the S. S. Colombia, being first duly sworn, testified as follows:

THE COURT: Captain Meyer, do everybody a favor here today. This courtroom is noted for its horrible acoustics and we are not going to be insulted if you keep your voice loud, all right?

THE WITNESS: Very well.

DIRECT EXAMINATION

BY MR. SMITH:

Q Captain, when did you first start going to sea?

A In 1938.

Q In what capacity?

A As ordinary seaman.

Q When did you receive your first license as a merchant marine officer by the United States Coast Guard?

A In 1942.

Q That was a third mate's license?

A That is correct.

Q Did you sail as a licensed deck officer after that?

A Continuously after that, yes.

Q Did you receive a master's license at some time?

A In 1946.

Q Have you sailed as master since 1946?

A Yes, I have.

Q When did you first join the Colombia?

A In 1963.

Q In what capacity?

A As master.

Q For how long did you serve on the Colombia?

A Until I retired in 1967.

Q Did you attend the vessel while she was in dry dock

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in the spring of 1964 at Newport News?

A Yes, I did.

Q Would you describe the ship at that point when she was on dry dock?

A Basically, she was in very good condition with the exception that we did have a cracked skeg in the way of the rudder and the stern of the vessel, and that was the major thing that kept the vessel in dry dock for over ten days.

I think it was two weeks, actually.

THE COURT: Captain, be good enough to spell "skeg."

THE WITNESS: S K E G, I believe.

THE COURT: All right. Now explain exactly what a skeg is.

WITNESS: A skeg is the aft-most stern frame which curves out to support the rudder post.

THE COURT: All right. Taking a look at Exhibit No. E, Defendants' Exhibit E, would you point out exactly where it is?

THE WITNESS: This is a skeg: it is a continuation of the keel.

THE COURT: The keel is where?

THE WITNESS: The whole length of the vessel, the fore and aft line.

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THE COURT: I mean on this particular drawing.

THE WITNESS: Excuse me. It is the keel that is up here.

THE COURT: I really don't know how better to explain it for purposes of the record.

It is the continuation of the keel that goes up and around where the rudder is; is that correct?

THE WITNESS: That's correct.

THE COURT: All right. That's the best I can do, gentlemen. Can you do any better?

MR. SMITH: It forms the aft-most part of the vessel at the stern where the shell plating meets to make the vessel a water vessel.

THE COURT: All right.

BY MR. SMITH:

Q Would you just circle the skeg area with this red pencil, captain?

A Well, it commences here and goes up through here and I believe around here.

Q Aren't you showing the whole stern frame?

A This is the whole stern frame.

Q Which part is the skeg? Just circle the skeg part.

A Oh, I'm sorry. It is here and comes around like this.

THE COURT: Now Captain, that area that you circled on Exhibit E is the skeg, is that correct?

THE WITNESS: That is correct.

MR. SMITH: I will just draw a line off there and your Honor can write "skeg."

THE COURT: Fine.

BY MR. SMITH:

Q Did you see the damaged skeg yourself, Captain?

A Yes, I did.

Q Did you see the skeg after it was repaired?

A Yes, I did. I inspected it.

Q Did you make an inspection of the vessel before she left the dry dock and after the repairs were completed?

A Yes, I did.

Q And what did you find at that time?

A I found that everything had been repaired satisfactorily. The vessel was in good condition.

Q To your satisfaction?

A To my satisfaction, yes.

Q Now, there came a time when the vessel was dry docked in March of 1965, is that correct?

A That is correct.

Q Were you master of the vessel at that time?

A Yes, I was master of the vessel.

Q What did you do on that occasion?

A I made an inspection of the hull as soon as the vessel was dry in the dry dock to check the condition of the bottom and the skeg, and the rudder, and the propeller.

Q Did you find anything at that time?

A No, there was nothing out of order.

Q Was there any deterioration of the skeg that was installed at the prior dry docking?

A No, not one bit of deterioration.

Q What was the condition of the rudder itself?

A It was in good condition at that time.

Q Have you examined the vessel's dry-dock log from the dry docking of March 26, 1965 to the date of the casualty on August 3, 1966?

A Yes, I have.

Q Did you find anything in that deck log that is relevant to the loss of the rudder other than the events that took place on August 3, 1966?

A No, I didn't.

MR. SMITH: Your Honor, I have all of those logs here and they have been in my office and I have offered opposing counsel the opportunity to go through them.

I don't intend to mark them all. I just intend to mark the relevant pages and put those in the record.

THE COURT: Didn't we deem the entire thing marked as Defendants' Exhibit C?

MR. SMITH: Yes. We have this pile here.

THE COURT: Yes, I know. I don't want to read it all, I must admit. Why don't we mark the relevant pages as C-1. Do you object to their receipt in evidence?

MR. LOESBERG: No, your Honor.

THE COURT: All right. Fine.

(Defendants' Exhibit C-1 was received in evidence.)

MR. SMITH: Your Honor, they will be August 1st, through August 5th, 1966. If the clerk could just staple those together I will remove them later after they have been marked as one exhibit.

BY MR. SMITH:

Q What if any inspection of the vessel did you make as master while you were on board as master, Captain?

A I always inspected the vessel in dry dock and after every passage at sea I would inspect it from the dock to be sure that the vessel was seaworthy.

Q What did this inspection consist of while you were alongside the dock?

A To check the underwater--

MR. LOESBERG: Objection. I am not going to try to delay it. I object only to the foundation, your Honor.

I would like to know what dates he is talking about. Is this the general routine of what we would have ordinarily done?

THE COURT: I think that's what we are getting into now.

MR. SMITH: It is just general routine.

A (Continued) I would inspect the vessel from the dock to see if there was any damage to the underwater portion as it became light with cargo which would be from the bow to the stern including the propeller and rudder, etc.

Q When was the last time before August 3, 1966 that you made such an inspection.

A In Safi, Morocco and also in Bombay prior to leaving Bombay.

Q You are going back prior to the voyage to Safi at Bombay?

A Yes.

Q You made an inspection there?

A Yes.

Q And you made an inspection at Safi?

A That is correct.

Q What did you observe on those inspections that you made, the one at Bombay and the one at Safi And I want you to distinguish between Bombay and Safi if there is any

distinguishing difference between the two inspections.

A There was no distinguishing difference between the inspections. The hull was sound and there were no indentations in the rudder and the propeller had no damage whatsoever.

Q Did you see the rudder?

A The rudder and the propeller had no damage whatsoever.

Q Was this your observation before you sailed from Safi, is that correct?

A That's correct.

Q Would you just briefly--and you may use that log book to refresh your recollection--describe the voyage from Safi to the point where the vessel lost its rudder?

A It was routine through the Atlantic and Mediterranean through the Suez. There were no problems in the Suez, through the canal and coming down through the Red Sea and there was no problem.

After leaving the Red Sea, we did encounter the monsoon winds in the open waters of the Indian Ocean?

Q Is that after you passed Aden?

A Beyond Aden, yes.

Q What was the vessel's course after passing Aden?

A Mostly easterly, a little bit south, approximately

around a hundred degrees.

Q Could you tell the court from the log book what those courses were for the 48-hour period prior to the casualty?

A On August 2nd, it was 99--at midnight we changed course to 99.

On the 3rd we were steering a course of 100 degrees gyro.

Prior to that time we were on a course of 86 gyro through the 1st of August.

Q So after you left Aden you were on a course which was approximately 10 degrees to the south of the easterly course, is that correct?

A That's correct.

Q What was the direction from which the seas and swells were coming?

A Southwesterly.

Q You mentioned that this was called monsoon.

A Yes, that is correct.

Q Which monsoon was it?

A The summer monsoon.

Q What is the effect of the monsoon on the sea?

A It tends to build up the seas and swells very high and rough.

Q How long had the monsoon been in progress at the time of this casualty?

A They normally start in June and this was the height of it in August.

Q What were the sizes of the seas and the swells that you personally observed that the vessel encountered after you left Aden?

A Well, they increased as we left land and got into the open Indian Ocean. The seas and swells kept increasing and on the day that we lost the rudder the swells were 15 or 20 feet and the seas were 12 to 20 feet, somewhere in that neighborhood.

Q What does the term "very rough sea" in your log book mean to you, Captain?

A Seas of 12 to 20 feet.

Q What effect if any would a 15 to 20 foot sea and swell coming from the--

MR. SMITH: I think I will have to lay a foundation for that question.

Q Where, in relation to the ship, were the seas coming from?

A The starboard quarter.

Q What effect would a 15 to 20 feet sea coming from the starboard quarter have on a vessel's rudder?

A It would exert more on it than the vessel was using in the seaway, and it is difficult to steer to a minor degree. Not to a major degree. It is a common occurrence.

Q And how was the vessel reacting to these seas and swells?

A She was shipping seas on the main decks fore and aft but she was rising very easily. There was no apparent damage or strain to the vessel at the time.

Q Is there a difference between a following sea and a sea that you are taking head-on?

A Oh, definitely.

Q And what is the effect on the ship?

A It is much easier riding a following sea as opposed to riding into a sea. Naturally, running into it you are straining the vessel more. Seas come over.

Q With respect to the rudder, is there a different aspect?

A Yes, it would be more force exerted on the rudder in a following sea than in the forward sea.

Q Did there come a time when the vessel broke broadside on the seas?

A Yes. After we lost way, after the losing of the rudder, when all the power was taken off, she broke in the

sea at that time.

Q What happened if anything to the vessel at that time?

A She rolled very heavily and shipped heavy seas over the main deck damaging the starboard gangway and there was also a produce gangway that was washed off and there was heavy weather damage to the locker and so on.

Q Is there an entry in the logbook to that effect?

A Yes, there is.

Q Would you read that entry or those entries?

MR. LOESBERG: Your Honor, I object only to the fact that the rudder is already gone. Isn't this irrelevant?

THE COURT: No. It is part of the log book, isn't it?

THE WITNESS: Yes.

Q Perhaps I can overcome counsel's objection and ask you, in relation to the casualty, when did this broach take place?

MR. LOESBERG: He already said when he lost the rudder.

A "At 1620 starboard gangway damaged when vessel came about in trough at sea."

And on the following day--

THE COURT: Let's not worry right now about the

following day.

BY THE COURT:

Q Exactly when was the rudder lost according to your logbook?

A At 1635 it was reported that the vessel wouldn't steer, on August 3rd.

THE COURT: Good.

BY MR. SMITH:

Q So it was approximately two hours later that the vessel broached, is that correct?

A Yes.

Q Is there an entry on the following day with respect to the damage that was observed on the vessel?

A Yes.

Q Would you read that entry for the record please?

A 1300, August 4. Check about deck shows these following items lost or damaged when vessel broached in sea and wind when losing rudder: 4 synthetic mooring lines from stern, sections of an aluminum awning stern blown off and loosened, one 50 foot aluminum produce gangway washed overboard. Secured at No. 7 hatch. Paint in forward paint locker damaged and broken open. To be inventoried."

Q How high was the gangway from the water line, the one that was damaged?

A Approximately 12 to 15 feet.

THE COURT: I'm sorry. That's not clear in my mind. You say the gangway was 12 or 15 feet from the borderline. Do you mean the bottom of it?

THE WITNESS: Yes.

THE COURT: Generally when a gangway is secured on a ship doesn't it have a tendency to tilt down a little bit toward the bottom?

THE WITNESS: A gangway has the stanchions taken off and the gangway is folded in a fore and aft line like on its side. In other words, the side of the gangway would be roughly one foot above the deck in this particular case.

BY MR. SMITH:

Q It would be in a horizontal position lashed in place?

A That is correct.

Q Now there came a time that the vessel lost its rudder; is that correct?

A That is correct.

Q And what time was that?

A 1635.

MR. LOESBERG: He already answered that.

THE COURT: He's leading up to something.

Q Do you have an opinion based on your experience as

a master mariner, as to the cause of the loss of the rudder?

A The excess of rudder pressure due to the heavy seas and swells.

Q Was there anything that a mariner or ship owner should have done to make the Colombia seaworthy which was not done before she sailed from Safi, Morocco?

MR. LOESBERG: Objection, your Honor. He can only speak from what a master should have done. A ship owner is another story.

THE COURT: But the master is the agent of the ship owner.

BY THE COURT:

Q Is there anything that you should have done more than you did?

A Not to my knowledge, no.

THE COURT: All right.

BY MR. SMITH:

Q Do you have an opinion as to the seaworthiness of the vessel at the time she sailed from Safi?

A Yes, I do.

Q What was that?

A It was secured and ready for sea prior to sailing.

Q What does that mean to you as a mariner? Was the vessel seaworthy or was it not seaworthy?

A It was seaworthy.

MR. SMITH: Your Honor, I have here the General Average Adjustment which I would like to have marked as an exhibit now simply to put in a copy of a protest which is in it. It will be the next exhibit which is H.

(Defendants' Exhibit H was marked for identification.)

MR. LOESBERG: Your Honor, there are certain objections to the statement of General Average which is a self serving document published by somebody hired by the ship owner. We do stipulate only to the damages.

THE COURT: I gather counsel wants to put in some kind of a protest which is in it.

MR. SMITH: For the time being.

MR. WEBBER: Yes, your Honor, if that document by itself is marked, we have no objection.

THE COURT: Well, mark the whole thing as H and mark the protest as H-1. I assume you have no objection to the receipt in evidence of H-1.

MR. LOWEBERG: No objection, your Honor.

THE COURT: All right, the rest of it will just be marked for identification.

BY MR. SMITH:

Q Can you identify this letter, Captain?

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A Yes, I can.

Q What is it?

A It is a Marine Note of Protest.

Q And with whom was that filed?

A With the American Consul in Singapore.

Q For the record, would you just read that?

THE COURT: Well, I can read it, counsel.

This is H-1, right, the Note of Protest?

MR. SMITH: Yes, your Honor.

MR. SMITH: I will have that marked as H-1, your Honor.

(Defendants' Exhibit H-1 was marked for identification.)

MR. SMITH: Your Honor, I would offer Exhibit H-1, the Note of Protest, in evidence.

THE COURT: It is received. There is no objection to it.

(Defendants' Exhibit H-1 was received in evidence.)

MR. SMITH: No further questions, your Honor.

CROSS-EXAMINATION

BY MR. GOLDBERG:

Q Captain, would you refer to your logbook and just tell me the draft of your vessel fore and aft at the commencement of the voyage at Morocco?

Q What was that date, do you recall?

Q I think it was July 17 or thereabouts to the 18th of the same year.

A You want the sailing draft from Morocco?

Q If you would, please.

A 31 foot forward and 31 foot aft. A mean of 31 feet.

Q Do you happen to remember what your length overall of your vessel was?

A 575 feet.

Q And your breadth?

A 74 or 75.

Q And what was your freeboard? What would it be at the draft you told me?

A There I'm going by memory.

Q The best you can.

A I would say about 14 feet.

Q Now Captain, you have been sailing since before World War II, is that correct?

A That's correct.

Q How many times have you been across the north Atlantic?

A Many times.

Q How many times have you been across the Pacific?

A Many times.

Q How many times have you been in the Southwest monsoons?

A A number of times.

Q That's the nomenclature for the type of weather condition that exists every year, isn't it?

A That's right.

Q It is predicted out there. They have a southwest and a northeast monsoon.

A That is correct.

Q Now, Captain, how many times have you been out in the ocean in force-12 weather?

A Many times.

Q How about force-11 weather?

A Many times.

Q How about force-8 weather?

A A number of times.

Q And how many times in force-6 weather and 5 weather?

A All the time.

Q What are you doing now?

A I own some theatres, and I am owner and operator of--

Q When did you quit going to sea?

A 1967.

Q When did you leave the company that owned the Colombia?

A 1967.

Q Now, there was nothing unusual about the wind and sea conditions on August 3rd, was there?

A No.

Q Or August 2nd?

A No. We were in the lee of the land at that time.

Q Captain, you did say, sir, that you mentioned that the skeg was damaged in 1963.

A That is correct.

Q I'm trying to do it this way. And that you went to the yard or were at the yard to see the repairs to the skeg.

A That is correct.

Q Do you recall much about what else was done beside repairing the skeg?

A Oh, many things were done. Naturally, the bottom was cleaned and painted.

Q I mean beside the general things. Do you recall anything done to the rudder?

A I believe there were repairs made to the rudder, yes.

Q Can you specifically recall the repairs made to

the rudder?

A No, I cannot because the skeg was the major thing at that time.

Q But you don't remember anything else being done in the rudder area besides the skeg today, is that correct?

A I believe the tail shaft was drawn.

Q I mean now. I don't want to belabor you and bother you. I just mean with the rudder assembly. Not the propeller.

A There was normal maintenance done on the rudder.

Q Any replacement of pintles, gudgeons, pins?

A I believe so, yes.

Q What was the cause of that trouble with the skeg, was that a grounding?

A I have no knowledge of what caused it.

Q You weren't on the ship then?

A I was on the ship at the time it was discovered.

Q Wasn't there a grounding in Kondla, India?

A Yes.

Q Which was the subject of a previous general average?

A Could be. I have forgotten the details.

Q Now, we also said, Captain, and you referred to the 1968 Jacksonville inspection when the ship was in the [illegible]

A Yes.

Q And you said you had no problems with the rudder.

A To my knowledge, I don't recall.

Q You didn't even look at the rudder then, did you?

A Yes, I did.

Q Did you see anything with respect to the rudder nuts?

A I don't recall at this time.

Q Well, I will show you a document--

A I may have reviewed it with the officers at the time. They were very competent and capable.

Q In other words, you made statements in your direct examination referring to the portion that you had no problems with the rudder on the second dry-docking which was at Jacksonville. That's what you said.

MR. SMITH: I don't think that was his testimony.

THE COURT: I don't think we need to characterize it.

Do you have a document which shows something?

MR. LOESBERG: I do, your honor. I was just trying to lay a foundation so Mr. Smith wouldn't object.

THE COURT: I'm sure he won't.

Q I show you a document given to me the day before yesterday, a report concerning the Colombia dated May 3, 1965

concerning owners repairs and refer to item 31 and ask you if this refreshes your memory?

A Yes. It was work that was done.

Q Do you recall that work?

A Yes, I remember it now but I didn't recall before.

THE COURT: What was the work?

MR. LOESBERG: The work, your Honor--

THE COURT: That's not in evidence yet.

What was the work Captain? Show him the document.

THE WITNESS: The lower pintle pin had dropped approximately one inch due to nut backing of machine threads for good tight fit-up of bolt and welded. A horseshoe flat bar keeper on same to preclude re-occurrence.

THE COURT: And that work was done, is that correct?

THE WITNESS: That is correct.

BY MR. LOESBERG:

Q Do you know the reason why the nut had backed off?

A No, I don't.

Q Do you know today why it had backed off?

A No.

Q Now, Captain, with respect to the Note of Protest that we talked about, in the Marine Order of Protest that is

in evidence, which is Defendants' Exhibit H-1, how many times have you filed a note of Marine Protest in your career as master?

A When heavy weather was encountered on a voyage.

Q Was that done when there is knowledge of damage or is it when you may have feared cargo damage?

A That is correct, when it may appear that there was damage to the vessel.

Q What is the purpose of it?

A Just to note the heavy weather had been incurred.

Q If heavy weather had been incurred it would be in the logbook, wouldn't it?

A Yes.

Q Do you know of any other reason why a protest may have been filed?

A To protect the ship owner in case of cargo damage.

Q Or any other type of damage.

A Yes.

MR. LOESBERG: No further questions of this witness.

MR. SMITH: Your Honor, I would like to have the report marked as an exhibit and I would like to offer that in evidence since the witness refreshed his recollection from it.

THE COURT: Yes.

MR. LOESBERG: I have no objection to that. We were going to put it in anyhow.

THE COURT: I can read it and ignore the markings. Don't worry about it.

MR. LOESBERG: There are certain attachments to it. You might as well put those in too, Mr. Smith, because we intend to use those later.

THE COURT: Yes.

MR. LOESBERG: We are trying to get you a substituted copy, your Honor, and cleaner copy than the one I have.

There was attached to that, Mr. Smith, the Jacksonville yard invoice and specifications. We can put the whole thing together your Honor and get everything in now.

MR. SMITH: I really would have to ask the witness but I think that's what it is.

MR. LOESBERG: Well, you gave us that.

MR. SMITH: I think you gave us those.

MR. WEBBER: Your Honor, may we have a discussion among counsel for a moment?

THE COURT: Sure.

(Discussion off the record.)

MR. LOESBERG: Your Honor, I don't see that there is any difference to this. Let's put this in as an exhibit.

You can put in yours or mine, and mark that. And certainly you're not going to deny the Jacksonville repair yard. And we can now put this in as a separate exhibit.

Is there any objection to that?

MR. SMITH: I will put them in as my exhibit.

MR. LOLSBERG: I don't care.

THE COURT: Gentlemen, it doesn't matter. I've got to read it one way or the other.

(Plaintiff's Exhibit 7 received in evidence.)

THE COURT: Mr. Smith, do you have any redirect?

MR. SMITH: I just have one question.

(Defendants' Exhibit 8 was received in evidence.)

REDIRECT EXAMINATION

BY MR. SMITH:

Q At what point in Safi did you make your inspection of the vessel, the inspection that you described on direct examination?

A Shortly after arrival, the day following the arrival, I inspected the vessel from the dock.

Q Would you tell the court what the draft was at that point?

A I would have to look that up.

Q Well, you may refresh your recollection from the log.

(Pause.)

A On July 14th the forward draft was 8' 9", the aft draft was 18 ' 3 ".

Q Now, on the drawing of the stern section, would you show the court what the exposed and above water section would be at that particular time, on Exhibit E?

A Much better drawings would show the exact draft.

I would say the 18 foot on the stern would be just above the propeller.

THE COURT: Just above the propeller or just above the shaft? You are indicating the shaft with your hand.

A The shaft, excuse me.

THE COURT: Blades of the propeller would be sticking up.

THE WITNESS: Yes, it would.

Q I point out to you Captain that there are draft marks on here.

A Oh, I'm sorry.

Q So could you take that heavy pencil again and just draw across the drawing about where the 18 foot mark is?

A I would say about approximately here.

Q Would you mark that 18 foot draft mark, please?

THE COURT: Just mark 18 foot.

(Witness marked.)

THE COURT: Are you finished, Mr. Smith?

MR. SMITH. Yes.

RECROSS-EXAMINATION

BY MR. LOESBERG:

Q Could you put the 31 foot draft mark on there?

A The scale goes up to 20 feet.

THE COURT: So that the 31 foot draft would be quite a bit higher, right?

THE WITNESS: That's correct.

BY MR. LOESBERG:

Q Captain, on your inspection on that date did you go with the second engineer of by yourself?

Excuse me. With the chief engineer.

A I don't recall at this time.

Q When is the last time you were on a ship that lost a rudder prior to the Colombia?

A None.

Q None?

A None.

Q You have been out in heavier seas than that day, haven't you?

A Yes, in typhoons and hurricanes, yes.

Q You have been out in force-10 weather?

A Yes.

Q And force-10 weather?

A Yes.

Q They are not typhoons or hurricanes, are they?

A No.

MR. LOESBERG: I have no further questions, your Honor.

MR. SMITH: No other questions, your Honor.

THE COURT: All right, step down, Captain.

(Witness excused.)

THE COURT: All right, are we waiting for the gentleman from the Persian Gulf?

MR. SMITH: Yes, your Honor. I would advise the court that since reading my opposition's brief, there is an allegation in there that the dry-docking of March '67 or April 1964 was performed negligently and I think it is only fair to call the superintendent engineer who did that job to testify.

THE COURT: Could you find him?

MR. SMITH: Yes, your Honor. I have located him. He's working on the Ambassador right now, the ship that was on fire and he said that he would either testify in court when he's finished with the job or he will be free to do it perhaps over this weekend by deposition.

THE COURT: All right.

Do you have any other witnesses here?

MR. SMITH: No, your Honor. I'm expecting one at quarter of twelve. I had expected the captain to be on quite a bit longer than this. He will come in and testify as to one point on the general average that needs clarification.

THE COURT: All right, Mr. Loesberg, do you still want to go in turn? Is it going to make any difference?

MR. LOESBERG: I would prefer it if possible.

THE COURT: It seems like we have an hour-and-a-half to wait.

MR. SMITH: I could call, your Honor, and get him down here sooner.

THE COURT: All right, why don't we do that.

MR. SMITH: May we have a five minute recess? I may be able to go forward.

THE COURT: All right.

(Recess.)

MR. LOESBERG: Admiral Patterson, please.

RICHARD O. PATTERSON, called as a witness by the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOESBERG:

Q Admiral, will you please state your age?

A 69.

Q And state what your present employment is.

A I am a nautical consultant.

Q Would you please give us a history of your educational background?

A I went to the New York State Maritime College in 1922, graduated from there in 1923 and went to--got my first officer's license in 1924 and sailed on various types of ships as an officer.

Masters license in 1930, and sailed mostly as chief officer from that moment on.

I went into the navy in 1940. Released from active duty in 1946 and as far as education is concerned, I have taken every course that the navy has in the Naval War College, Industrial College of the Armed Forces and Armed Force Staff College, and quite a few others.

Q And then--

THE COURT: What was your rank when you left the navy?

THE WITNESS: When I was released from active duty I was a captain and later on I was appointed a rear admiral and later on rear admiral upper half.

BY MR. [illegible]:

Q Would you continue after that?

A Yes. I was with the United States Line from 1927 on except for the period when I was off on active duty.

Returned to the United States Lines, and commanded roughly about 14 or 15 of their ships from the cargo ships on up to the passenger liners.

I was also involved with the design and preliminary planning of new ships, new construction and in the container ships.

After I retired from the United States Lines I spent--

Q What year was that?

A I retired from the United States Lines in 1970.

After that I spent two years with the General Dynamics Shipyard in Quincy taking the vessels out on trial trips.

Q Have you done any work with meteorology or hydrography in your employment?

A Yes sir, I have. I have been deeply involved with that almost from the time I first started to sea and just before my retirement from the United States Lines I was given a public service award from the Weather Bureau for my services to them. I lectured them two or three times on the requirements for weather reports to ships at sea.

Q Are you generally familiar with the T-2 type vessel?

A Yes, sir, I am.

Q Have you seen the diagrams of the rudder assembly, the rudder?

A Do you mean of the Colombia?

Q Yes.

A Yes, sir, I have seen those.

Q Have you examined the logbook for August 2nd, and 3rd of 1966 of the Colombia?

A Yes sir, I have.

Q Did you notice the noon position and the course steered?

A Yes sir, I did.

Q Did you also notice the wind and weather conditions noted in the logbook?

A Yes sir, I did.

Q Did you hear Captain Meyer's testimony as to the wind and sea conditions encountered by him?

A Yes sir, I did.

Q Are you generally familiar with the area in which the Colombia was sailing on August 2nd and 3rd of 1966?

A Yes, I am

Q Have you ever sailed on runs to India?

A Yes sir, I have.

Q Are you familair with the southwest monsoon?

A Yes, sir.

Q Is the southwest monsoon unusual?

A Nothing unusual. It occurs every year and has for thousands of years.

THE COURT: Not to your personal knowledge.

THE WITNESS: Well, I have read translations of things that are supposed to be thousands of years old and we know they existed then.

BY MR. LOESBERG:

Q Captain, predicated on your experience, do you have an opinion as to whether or not the wind and sea conditions encountered by the S.S. Colombia for the dates of August 2nd and 3rd according to the logbook and the testimony of the master this morning were abnormal for the season and area in which this ship was sailing?

A No, they were not abnormal at all.

Q What do you base this opinion on?

A Just the weather data in the logbook and on the normal conditions for the southwest monsoon. They are quite normal.

Q Now Captain, predicated on your experience, do you have an opinion as to whether a vessel such as the S.S.

Colombia loaded with approximately 20,000 metric tons of tripple super phosphate in the ship were in a sound and seaworthy condition, should have been able to stand the wind and weather conditions experienced by that vessel without loss of her rudder?

A She should have been able to handle that weather without the least bit of difficulty.

Q How about without the loss of a rudder was the question.

A Without the loss of the rudder, yes.

Q What do you base that opinion on?

A Because it was just standard weather , predictable weather conditions and it is not anywhere near as rough or puts stress and strain on the ship as normal weather conditions in the north Atlantic or north Pacific or any other weather conditions.

Q Have any ships that you have been master on ever lost their rudder or parts thereof?

A I was on one ship that lost half of its rudder. I have been on another one that lost the plating on one side.

Q Do you know the reasons? Do you recall the reasons?

A Well, the one that lost one half of the rudder that was purely through defective construction of the rudder.

The one that lost the plating on one side was due to defective riveting on the plating.

MR. LOESBERG: I have no further questions of this witness.

CROSS-EXAMINATION

BY MR. SMITH:

Q Captain, it wasn't your intention, in your testimony, to minimize the weather, was it?

A Not to minimize, no.

Q A force-7 wind with very rough seas and heavy swells can cause damage to a vessel, can't it?

A Yes, it can, if the vessel is caught under a very awkward situation. In normal weather a ship that size should be able to go right through that without the least bit of difficulty.

Q Have you ever sailed on a T-2?

A No, sir.

Q You have had no experience on a T-2 at all?

A No, only to pilot them once or twice during the war in and out of the Atolls.

Q So you have no experience with respect to the actual construction or the design of this particular vessel, of your own personal knowledge?

A No personal knowledge.

Q Have you ever experienced any damage to a ship with force-7 weather?

A Force-7 weather? Not that I can particularly recall, no. That is not considered a particularly severe condition.

Q Now, did you, in your study of meteorology, have reports from vessels where the damage was sustained with reports of force-7 weather?

A The only damage I can imagine a vessel sustaining under that condition--

Q No, not what you can imagine. Reports that you received from other vessels.

A On damage done in wind force-7?

Q Yes, do you recall any?

A No.

Q What you are testifying today is that under no circumstance would a vessel be damaged with force-7; is that correct?

A No, that is not quite correct. I would have to qualify that.

Q All right, would you qualify it then please?

A If a vessel was very light and had almost no draft of six to eight feet forward and was bucking up against force-7 conditions she could very easily cause damage to it

because of the pounding.

Q Isn't it true, Captain, that mariners tend to minimize the size of the seas and the swells and the winds when they have a following sea-swell and wind?

A Well, that can't be answered in an absolute statement. Some do, some don't. That's about the only thing I can say to that.

Q And you really have to be there yourself to experience the weather to say what it is, don't you?

A Either there or one has to have all the various reports of the existing conditions. Experience will tell a person what the conditions really were.

Q Did you have all the reports that you needed to make this expert opinion?

A No, I have not received all the reports I would like yet, no.

MR. SMITH: No further questions, your Honor.

MR. LOESBERG: Your Honor, at this time we are going to let him go but we did put him on for the convenience of the court.

We have weather records of other ships which we will put in evidence to satisfy Mr. Smith's requirement and we may call him back then.

THE COURT: You have never seen these records,

have you?

THE WITNESS: No, sir, I have not.

THE COURT: Make sure they are shown to you.

THE WITNESS: Yes, sir.

(Witness excused.)

MR. SMITH: Your Honor, can we take another break? I think we can stipulate his testimony. It was suggested by opposing counsel that we do that.

MR. LOESBERG: This is the general average man.

MR. SMITH: Yes.

THE COURT: All right, take five and let me know when you get the stipulation worked out.

(Recess.)

MR. SMITH: Your Honor, we have agreed between counsel that pages 64 through 181 of Exhibit H for identification will be put in evidence without objection from either party, and that on page 131 in the balance to pay Colombia the figure of $44,299.69 should read $47,200.37.

I will offer this in evidence.

THE COURT: Just those pages, right?

MR. SMITH: Just those pages. I don't know how we will take care of the other one, your Honor.

THE COURT: Just leave them in there.

Those pages referred to will be received in evidence

as Exhibit H. I assume the rest of it has nothing to do with this case.

MR. SMITH: It does, your Honor, but they have objections to them.

MR. LOESBERG: It is hearsay. That's why we object to them. They are not from the mouths of witnesses.

MR. SMITH: I have no other witness at this time, your Honor. I will try to get the other ones in as quickly as possible.

THE COURT: All right. Do you have anybody else?

MR. LOESBERG: I have one more man but I can't put him on until he goes forward now.

THE COURT: Who is the fellow coming in from the Persian Gulf?

MR. SMITH: Herman Berke, who was the surveyor on the 1965 dry dock. That was the last dry-docking before this casualty.

THE COURT: All right. And who do you have left?

MR. LOESBERG: We have Mr. Webber, an expert. I don't have any fact witnesses, your Honor, it being this type of case.

THE COURT: Mr. Smith, when do you think that Mr. Berke will be in?

MR. SMITH: Your Honor, the last word I had this

morning was that they expected him in today and I left word to have him call me and try to be in court at 2:00 o'clock this afternoon.

THE COURT: Do you want to take a chance and come back at 2:00 o'clock?

MR. SMITH: I would like to call first now and see if I can find out something.

THE COURT: All right, I'll tell you what: why don't you call right now, you can use the phone here in the courtroom or the one in the robing room, and if it looks like he's going to be here at 2:00 o'clock, I'll be back at 2:00 o'clock.

I assume Mr. Loesberg and Mr. Webber will be back at 2:00 o'clock and we can go forward.

If he can't be here at 2:00 o'clock, call my chambers and let me know when he will be here, all right?

MR. SMITH: Yes, your Honor.

I have another witness who will only take about five minutes.

THE COURT: Is he here now?

MR. SMITH: No, he isn't, your Honor.

THE COURT: I would schedule him for 2:00 o'clock this afternoon too. Is he from New York?

MR. SMITH: Yes. He's a metallurgist.

THE COURT: If we are going to end up with Mr. Berke tomorrow why don't we put him on for tomorrow too?

MR. SMITH: All right, fine.

THE COURT: Make your phone call from chambers.

(Recess.)

(Adjourned sine die.)

1 jbmch

THE EASTERN MARINE & FIRE INSURANCE COMPANY

v.

SS COLUMBIA, et al. 68 Civ. 4798

v.

JOHM PEMBERTON MOSSE and INDEMNITY MARINE ASSURANCE CO., LTD.

September 20, 1974
10:45 a.m.

(Trial resumed)

THE COURT: Mr. Smith, did we get our gentleman in from the Persian Gulf?

MR. SMITH: Yes, your Honor.

Mr. Loesberg has something he would like to put in evidence first.

THE COURT: Sure.

MR. LOESBERG: We took Admiral Patterson out of turn and there was a document we got and we want to put it in and I want to recall Admiral Patterson for one or two questions and possibly the man who got the document.

THE COURT: All right.

MR. LOESBERG: I would like to have marked for identification the official United States Weather Bureau records for the days in question.

(Plaintiff's Exhibit No. 9 was marked for

identification.)

R I C H A R D O. P A T T E R S O N, resumed.

THE COURT: Admiral Patterson, you recall that you were sworn to tell the truth the other day.

THE WITNESS: Yes, sir.

THE COURT: That oath continues today.

THE WITNESS: Very well.

MR. LOESBERG: These are certified and I would like to offer them as an exhibit.

THE COURT: Do you object to these?

MR. SMITH: I would like to know what they are first.

THE COURT: You haven't seen them?

MR. SMITH: I know what they are but I don't know to what extent they represent the weather in that area. There was something set in the record by Mr. Loesberg and I am not sure that it's absolutely correct.

Perhaps on cross-examination of Captain Patterson I can bring it out and then renew the offer at that time.

MR. LOESBERG: I have, Mr. Smith, in court the man who went to North Carolina to get the records and I can put him on with three questions and may satisfy anything that you object to.

MR. SMITH: If you feel it's necessary.

MR. LOESBERG: Well, you may question it.

THE COURT: Do you want to put on whoever you want to put on?

MR. LOESBERG: Yes.

Would you leave the stand for a few seconds? I want to put Mr. Zeltmann on.

(Witness excused)

W A L T E R F. Z E L T M A N N, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOESBERG:

Q Mr. Zeltmann, will you tell me by whom you are employed?

A I am employed by -- the president of International Weather Corporation. It's a firm of meterological consultants.

Q And did you, at my request, go to North Carolina to obtain certain weather documents for August 1st through August 31st of 1966?

A Yes, I did.

Q Were you supplied with noon positions of the SS Columbia?

A Yes, I was.

Q And will you tell us how you went down there and what you did and what you asked for and received?

A Well, I first received the request Monday and I immediately called down there and gave them the positions and asked them to start gathering together the data for me.

I went down there on a flight Tuesday morning, got there about 12:30, spent several hours there while they were gathering the information --

THE COURT: All right. Unfortunately, you and counsel know exactly where "there" is.

I assume that "there" is the National Weather Service, is that correct?

THE WITNESS: It's the National Climatics Center which is the main repository of all the weather records in the United States. It's a branch of the Environmental Data Service, the National Oceans & Atmospheric Administration, U.S. Department of Commerce. It's in Ashville, North Carolina.

THE COURT: When you got down there tell us what happened.

THE WITNESS: Well, I went to the location which is in the Federal Building and discussed what records

were available and they told me there was only a limited amount available that they could find in the short time.

I left there at about 4:00 o'clock since I had to catch a plane at 5:30.

THE COURT: When you left there, did you take with you Plaintiff's Exhibit No. 9?

THE WITNESS: Yes. These are all the records that were available down there at that time.

Q Would you tell us in general what those documents are?

A Well, of course, the first, the coverpage is a certification that they are official records.

Then this is followed by two satellite weather photographs made on the 2nd and 3rd. We were unable to find one for the 1st for the area in question.

Then this is followed by three weather logs from ships that happened to be passing through the area in the vicinity of the Columbia and in addition to that, three weather maps, each made as of noon Greenwich time on the 1st, 2nd and 3rd of August, '66.

MR. LOESBERG: No further questions of this witness.

I'll offer the exhibit identified as Plaintiff's Exhibit 9 in evidence.

CROSS-EXAMINATION

BY MR. SMITH:

Q Do you have a copy of the key for reading the weather reports from the vessels?

A Not here, no. I have it in my office.

Q Isn't that necessary in order for one to interpret what is on those records?

A Well, if you are not familiar with the code, it would be, yes. If you are familiar, you can read it right off.

MR. SMITH: Your Honor, I would like to have counsel produce a copy of the code so that we can interpret what is before the Court now.

MR. LOESBERG: I don't have one, your Honor. I think my next witness can read them and give you the code. If not, I'll go and obtain the code. It's a very simple code. It's not that hard.

There is a number for feet and that's all there is. And direction.

THE COURT: I am aware of what it is.

MR. SMITH: I have no other questions.

THE COURT: You can get a copy of the code and produce it in evidence; right?

MR. LOESBERG: I'll definitely do that.

THE COURT: Before you go, you said there were weather logs from various ships. Is there a weather log for the SS Columbia?

THE WITNESS: No, there wasn't a log for the Columbia.

THE COURT: That's all.

(Witness excused)

MR. LOESBERG: Admiral Patterson.

R I C H A R D O. P A T T E R S O N, resumed.

FURTHER DIRECT EXAMINATION

BY MR. LOESBERG:

Q I show you Plaintiff's Exhibit 9 and ask you, have you looked at that previous to today?

A Yes, sir, I have.

Q Now, the other day in cross-examination by Mr. Smith, he stated were there any documents that you might have wanted or could have looked at besides the ones that you mentioned.

Does this make up for the one that you said that you might have needed?

A Yes, sir, this fills the gap.

Q Now, with respect to August 2nd and August 3rd, did you look at the weather map or the ship logs for the reports of other ships that might be nearest to the Columbia

with respect to wind forces and with respect to wave heights reported to the Weather Bureau?

A Yes, sir, I did.

Q What did you find, sir, first with respect to the 2nd and then with respect to the 3rd?

A On the 1st, we have nothing on the 1st that is very close to the Columbia except for one ship. She was at that time in the lee of the land and around the Gulf of Aden. One ship is almost the same type of wind, southwest, 10 knots, sea conditions about 7 feet.

THE COURT: The record should reflect that --

A The Steamship Steelmaker.

THE COURT: The admiral was reading from the log of the Steamship Steelmaker.

Q Would you go to the 2nd and give us the ships? The general vicinity or the closest ones. If you can identify the ship, give the ship and the sea conditions and the heights and the wind.

A On the 2nd, we have the Steelmaker still there, a bit to the eastward of where the Columbia was and she is reporting about the same thing, wind southwest 10 knots, sea conditions about 7 feet.

Then we have the Express which was a bit to the westward. She was reporting wind from the south

10 knots. She reports no wave heights because she was in the lee of the land very much.

On the 3rd, again one of the nearest ones is the Steelmaker which was up to the north and a bit to the east, reporting winds from the southwest 20 knots, sea height about 9 feet, swell heights about 7 to 8 feet.

Then we have the Express on the 3rd which was well to the west of the Columbia and reporting winds from the west northwest at 20 knots, sea height 5 feet.

THE COURT: The second ship that you mentioned was the Express, is that correct?

THE WITNESS: Yes, sir.

THE COURT: You said that that was well to the west?

THE WITNESS: Yes, sir. That was well to the west of her. She was about 250 miles west of where the Columbia was.

THE COURT: Would she still be affected by the lee of the land there?

THE WITNESS: She would be well into the lee of the land in that position. She would be out of the full effect of the monsoon.

Q How about the first ship that you mentioned? How far would she be?

A The first one was the 3rd of August. The first one was -- this is on the 3rd and that was the Steelmaker.

She would be about 300 miles north and perhaps 100 miles to the east.

Q Are there any other ships in the general vicinity?

A Nothing else there. Those are the closest we have.

Q Now that you have read this document, does this change your opinion as to any other -- in any way as to the opinion you gave earlier in the week concerning the weather conditions that the Columbia may have experienced?

A No, sir. They just confirm the fact that the conditions out there were the normal monsoon conditions for the time of the year. We have on the weather maps -- we do have some indicates here of one or two ships in the ocean.

Q Well, could you give me that?

A Yes. On the 1st, there was --

Q I am speaking about the 2nd and 3rd, which would be more relevant.

A I would bring out the 1st, because she is almost in a position very close to where the Columbia had the difficulties at a later date.

One out here at that time had the wind from the southwest at Force 7, which is 35 knots; sea from the same direction, sea height about 11 feet.

Q What day was that?

A That was on the 1st.

Q Would you go to the 2nd now and the 3rd?

A On the 2nd, we have two ship reports, both of them a little bit to the east of the Columbia; one reporting wind from the south southwest at 25 knots, sea height about 7 feet.

Another one that I can't really read the exact wind force from the southwest, sea height 7 to 8 feet.

Then, on the 3rd we have no ship reports actually in the vicinity of the Columbia.

Q That's on the weather map?

A That's on the weather map, yes, sir. We have one about 300 miles to the northeast, southwest winds 30 knots, sea height about 3 feet and the swell height of about 11 feet.

MR. LOESBERG: I have no further questions, your Honor.

THE WITNESS: That's the Express. The Steelmaker has a more complete weather log, your Honor.

In this position, this is the wind direction

in 10 degrees, like 23 is 230 degrees. The next one is 16 knots, and over here the wave direction, the wave time and the wave heights. The wave heights is in 1/2 meters, and that's the International Code.

THE COURT: Could the report on the weather map indicating that there was a ship in the area, could it have come from the Steelmaker?

THE WITNESS: It could. I can find out in just a second.

The one on the 3rd?

THE COURT: Yes.

THE WITNESS: The one on the 3rd could not come from the Steelmaker. She would be too far north; about 300 miles.

I'll take a look at the one on the 2nd. No, sir, that would not be the Steelmaker, either.

THE COURT: Go ahead.

CROSS-EXAMINATION

BY MR. SMITH:

Q Captain, what was the approximate distance of the nearest vessel to the Columbia on August 2nd?

A The nearest vessel, this is according to the weather map -- I don't have a --

Q Well, from the information that you have in

front of you, what is the closest vessel?

A The information is an unnamed ship about 150 miles northeast of the Columbia on 1200 Greenwich on the 2nd.

Q Do you have the weather reported from that vessel at that time?

A Yes, we do.

Q What is it?

A Winds southwest 35 knots, sea height about 5 feet, swell height about 9 feet.

Q And on the 3rd, my recollection is that there was no vessel close to the Columbia, is that correct?

A On the 3rd we have one up to the northeast, about 300 miles northeast.

Q So the weather could be quite different 300 miles away, is that correct?

A Not in the monsoon season, no, sir. The variation would be slight.

Q The weather that you observed from the log book, is that inconsistent with the weather that you see on that chart?

THE COURT: When you talk about the log book, you mean the log book of the Columbia?

MR. SMITH: Yes.

A I would like to have a look at the log book of the Columbia, if I may, on those dates.

Q Did you look at it once before?

A Yes, I did, but I can't remember at the moment exactly.

(Pause)

(Document handed to the witness)

A On the 3rd at 1600 ship's time, which is about 1200 on the Greenwich, they were reporting winds from the south southwest 30 to 35 knots; that's almost what the conditions should be there.

Q So the log entries are consistent with the weather that was reported by other vessels, is that correct?

A Yes, sir.

Q Going back to your testimony on Monday, you stated that you were on two vessels that had rudder damage.

A Yes, sir.

Q Were you master of those vessels?

A No, sir, I was not.

Q In what capacity had you sailed them?

A I was second officer on one and chief officer on another.

Q Which one were you chief officer on?

A On the City of Baltimore that had the plate peeled off from the side of its rudder.

Q And as chief officer, you had the responsibility of inspecting the vessel at regular intervals, is that correct?

A That is correct, yes, sir.

Q Did you make such an inspection prior to the voyage that you were on where the plating peeled off the rudder?

A Yes, sir, we did.

Q Did you find anything wrong with the rudder at that time?

A At that time nothing that we could find, no.

Q So you started on the voyage, is that correct?

A That's correct.

Q And during the course of that voyage the rudder plating peeled off?

A That is right, sir.

Q Had the vessel been in drydock sometime prior to that?

A I couldn't remember that. That was many years ago.

Q Was this an American flag vessel?

A Yes, sir.

Q Aren't American flag vessels inspected at regular intervals?

A Yes, sir, they were drydocked every year in those days.

Q So you would assume that this particular vessel was drydocked shortly before this occurred, is that correct?

A I couldn't say shortly before because, once again, it's too far back.

Q No more than a year then, is that correct?

A No more than a year.

Q Because the requirement at that time was one year?

A That is correct.

Q Did you inspect the vessel on dry dock at that time?

A Yes, as a matter of curiosity I went down to see what had happened.

THE COURT: You mean after the rudder --

THE WITNESS: After the rudder peeled off. They discovered that when we got into a dock before we even went into a dry dock.

Q I am speaking of the drydocking prior to the

one for the voyage.

Do you recall going down to the dry dock on that one?

A No more than to inspect the general cleanliness, the bottom, had it been cleaned off, and as far as a technical inspection of the rudder at that time, no, not that I can remember.

I don't think I did, anyhow.

Q Whose responsibility was that?

A That would be the chief engineer's.

Q How about the personnel ashore? Who would do it from the shore?

A The port engineer would do that.

MR. SMITH: No further questions.

MR. LOESBERG: No further questions of this witness, your Honor.

(Witness excused)

THE COURT: Well, Mr. Smith, I guess we'll call Mr. Berke now.

H E R M A N B E R K E, called as a witness by the defendant, being first duly swor: testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q Mr. Berke, what was your occupation in March of 1965?

A Surveyor.

Q For whom were you a surveyor?

A Independent surveyors.

Q What was the name of that firm?

A Pillatt, Sweeney.

THE COURT: Mr. Berke, this courtroom is notorious for its bad acoustics, so we won't think you are yelling at us, but keep your voice up; all right?

THE WITNESS: I'll try.

Q Prior to 1965, would you tell the Court what your background was educationally and professionally?

A Graduate of Merchant Marine Academy and New York University, mechanical engineering, and went to sea and acquired chief engineer's license. Had been a surveyor, I guess -- port engineer surveyor for twenty years now.

Q Prior to 1965 --

A Approximately ten years.

Q You were a surveyor for approximately ten years?

A Yes.

Q Were you an independent surveyor during that period of time?

A Yes, sir, part of it -- most of the time.

Q Now, in the course of your service as an independent surveyor, how many T-2 type vessels, particularly referring to the stern. the ruddern, stern frame, that area, have you inspected?

A I would say offhand probably fifty or more.

Q Did you make a survey in March of 1965 on the Columbia?

A I don't know what the date is. I did look at the vessel and attended the vessel in '65, yes, sir.

Q Well, I show you Plaintiff's Exhibit 7 and ask you if you can identify that document.

A Yes, sir. This is a report I wrote concerning my attendance of the vessel, Columbia, in March of '65.

Q I have here another document which is marked Defendant's Exhibit G.

Could you identify that?

A This is the ABS survey report concerning the drydocking, attendance of the vessel in March of '65.

Q That was the drydocking that you attended as the owner's representative?

A That's correct, sir.

Q I have another document here which has been previously marked as Plaintiff's Exhibit 8.

A This is the shipyard account of the various work attended to by owners and underwriters in the Jacksonville Shipyard concerning the Columbia in March of '65.

Q Mr. Berke, would you describe what you did with the Columbia in March of 1965? You may use those documents or any other documents that you want to refer to to refresh your recollection.

A I attended all the requirements of the Classification Society, the Coast Guard requirement, and what I believe was reported by the vessel's personnel and my own observation, all work required to make the vessel seaworthy and capable of performing for the ensuing year.

Q Would you, particularly with respect to the rudder and stern frame, now, would you describe the repairs that were made to the ruder?

A During dry dock examination we found the lower pintle, the nut was loose on it, and it was removed, taken ashore, remachined, a new nut machined for it, it was replaced, clearances checked and keeper placed on it and a keeper placed on the bottom so that the bottom pintle wouldn't drop out.

In addition, we checked the clearances and found

them satisfactory on the upper pintle and in examining the rudder when it was well staged around there, any defective welds or any defective portions of the rudder plating or the palm, the bolts, et cetera, were made good.

We V'd out and welded, indicated here 4 feet of defective welding.

Q Where was that defective welding?

A On the plating.

THE COURT: On the plating of the rudder?

THE WITNESS: The plating of the rudder, yes, sir.

Q After the repairs to the rudder were complete, would you describe what was done, if anything?

A We tested the rudder. It was a gas-feed rudder. She has a preservative in it that has to be gas freed and cleaned, stamed out, prior to doing any hot work on it, and at the conclusion of gas freeing and at the conclusion of all repairs on the rudder we pressure-tested it with air, found it satisfactory, replaced the preservative inside the rudder plating and put the plug back on.

Q Mr. Berke, were the repairs that are shown in the ABS report made, to the best of your knowledge?

Again, we are referring specifically to the

rudder and stern frame area. I don't want you to go through the whole survey.

A That's correct. It was carried out.

Q Who was the ABS representative at that survey?

A Mr. William Noble, Jr.

Q Was he in attendance at the vessel when the repairs were made?

A That's correct, sir.

Q Now, we have also a repair bill from the Jacksonville Yard.

Would you look at the tiems that refer to the rudder and tell the Court whether, to your knowledge, those repairs were made?

A Yes, sir. These repairs were carried out.

Q What items are you referring to specifically with the ruder?

A Item No. 31, Item No. 44.

Q Is there also an Item 30 there with respect to something on the rudder?

A Zinc plates, hull zinc plates were placed on the rudder and in the stern frame area, yes, sir.

Q What is the purpose of the zinc plates?

A As an anti-corrosive measure to assist in combatting the effects of corrosion.

Q Do you know Captain Heath of the United States Coast Guard?

A Yes, sir, I do.

Q Was Captain Heath in attendance during the course of the repairs?

A To the best of my recollection, yes, he was.

Q Were you personally satisfied with the way the repairs were done and completed on the Columbia on the drydocking in March of 1965?

A Yes, I was, sir.

Q Was there any outstanding item on the rudder stern frame when the vessel left the yard on March 1965 -- March 26, 1965?

A The Classification or the Coast Guard did not have anything outstanding. I don't recall whether I had made any notation in my report to the owners concerning any defective area concerned with the rudder.

Q Would you look at the report and see if there is anything there?

Again, we are speaking specifically with respect to the rudder and the stern frame.

A I have a notation in my report to the owners concerning the zinc plates and some indication of some pitting in the stern frame skeg and the rudder itself.

I noted that the zinc should be adequate to compensate for the pitting.

Q What effect would that pitting have on the rudder or stern frame?

A Well, the pitting, it means that there is corrosion and a reduction in the strength of that particular thing, but of a minor degree, of no particular consequence that I would consider to have done anything further to it,and I made a notation to the owner that the zincs may conceivably or would arrest the problem or keep it within normal limits.

Q What is float coat, Mr. Berke?

A Float coat is a coating that's applied usually internally in a tank and acts as a coating. It floats atop the water and as you remove the water the coating, the float coating material itself that's atop the water floats atop the water, coats the members as it comes down and acts as a coating, similar to paint.

Q And that preserves the inside of the rudder; is that correct?

A It does a reasonably effective job, yes, sir.

Q What sort of a test -- you mentioned the rudder was tested after completion of the repairs. What sort of a test was made?

A An air test.

Q Is that a pressure test?

A That's a pressure test, yes, sir.

Q And would you describe what would happen if the rudder could not withstand the pressure test?

A Well, you don't put that much pressure on it. You just test to see if it's tight and anyplace where it's not tight, with a fractured weld or a hole in the plating or something, would show up with air flowing out of it.

Q As air would come out of a tire or leave the tire?

A That's correct.

MR. SMITH: I have no other questions.

THE COURT: Do you have any questions?

CROSS-EXAMINATION

BY MR. WEBBER:

Q Mr. Berke, you mentioned that in March of 1965, you were employed by Pillatt & Sweeney, is that correct?

A I was a partner in the firm.

Q Did there come a time that you were subsequently employed by Ogden Sea Transport, Inc.?

A That's correct, sir.

Q When did you become employed by Ogden?

A I believe it was 1969.

Q By whom were you employed in August through September 1966?

A I was a partner, self-employed.

Q Pardon me?

A I was self-employed.

Q You had left Pillatt & Sweeney by that time?

S I don't recall when we left. I was never an employee. I was always a partner, but I don't recall what time. Sometime about that time, '66.

Q You can't recall the month you left Pillatt & Sweeney, however?

A No, sir.

Q Mr. Berke, you testified that the United States Coast Guard inspected the Columbia during the 1965 drydocking and that -- I believe it was Commander Heath at that time, was it not?

A I don't know what his rank is but Mr. Heath or Commander Heath or Captain Heath was, to the best of my recollection, in attendance.

Q Now, in Item 34 of your report which is dated May 3, 1965, you stated, and I quote, "As related, the vessel received very understanding inspection."

Was this a comment in reference to the Coast

Guard inspection?

A I don't have that in front of me. I can't comment.

THE COURT: Are you two fellows dealing with two different documents?

THE WITNESS: I have Item 34 dealing with the piping.

Q Do you see the comment that I quoted, "As related, the vessel received very understanding inspection" (pointing)?

A Yes, I see that.

Q And to what inspection does that comment refer?

A It refers to that particular piece of pipe.

Q Well, does it refer to the Coast Guard inspection?

A It refers to Coast Guard and the Bureau. They were both in attendance.

Q In your opinion, what does "very understanding inspection" mean to you?

A We are talking about an opinion of whether the thing is sound or not. It was my opinion it was sound and my opinion prevailed with the two inspectors. However, I cautioned the owner that conceivably next year, if the argument does come up again, that perhaps he may lose next year.

Q The comment begins with "As related."

Did you make this comment to someone in the owner's office prior to the date you submitted the report?

A I don't recall.

Q You wouldn't recall to whom you had made the comment?

A I don't recall.

Q I would like to show you a drawing, entitled "Contraguide Rudder, T-2 Tanker."

MR. WEBBER: Can we have this document marked as Plaintiff's Exhibit 10 for identification.

(Plaintiff's Exhibit No. 10 was marked for identification.)

Q Mr. Berke, I particularly draw your attention to the section of the drawing entitled "Arrangement of pintels and bushings," and I ask you if that is not a generally accurate representation of the pintles and bushings on the SS Columbia as of March 1965?

I would note parenthetically that I do not ask you to comment on the locking devices on the pintles nuts as that matter will be a subject of my cross-examination.

A It appears to be the contraguide, as I recall it to be similar to one that was on the Columbia, yes, sir.

MR. WEBBER: May we have this document marked as Plaintiff's Exhibit 10 in evidence.

MR. SMITH: Subject to his qualification, I have no objection.

xxx (Plaintiff's Exhibit No. 10 was received in evidence.)

Q Mr. Berke, if you would refer to Item 31 in your report of May 3, 1965.

Do you see the remark, "The lower pintle had dropped approximately 1 inch due to nut backing off"?

A Yes, sir.

Q Could you point out to the Court the nut which backed off and circle that nut with a green pencil?

(Witness complies)

MR. WEBBER: May we have this marked as Plaintiff's Exhibit 11 for identification, please.

xx (Plaintiff's Exhibit No. 11 was marked for identification.)

Q Mr. Berke, can you tell us what this appears to be?

A Most anything.

THE COURT: Could it be a pintle pin?

THE WITNESS: It could be, except it's inaccurate. It has no liner on it.

THE COURT: Has no liner?

THE WITNESS: No liner. It's inaccurate.

Q We are not addressing ourselves to the question of a liner at this point.

On this schematic drawing which I now hand you, would you, using this green pencil, sketch in the position of the nut as you first saw it in 1965 at the drydocking?

MR. SMITH: I object. He's already said it's inaccurate and it may be inaccurate in other ways, and I think until it's brought out that the particular part of the drawing that he is going to work on is accurate --

THE COURT: Is the threading accurate?

THE WITNESS: It appears to be accurate.

THE COURT: Show us where the nut was.

THE WITNESS: The nut must have been backed off. Instead of being down at the base of the table, it was backed off.

Q Would you sketch that in to the best of your ability, Mr. Berke?

THE COURT: That's done in green pencil, also.

(Witness complies.)

MR. WEBBER: May this be received in evidence?

MR. SMITH: No objection.

(Plaintiff's Exhibit No. 11 was received in

evidence.)

Q Mr. Berke, do you recall who, if anyone else, was present when you first examined the lower pintle nut in March of 1965?

A To the best of my recollection, the Coast Guard surveyor and the Bureau surveyor probably were.

Q Do you recall specifically that they were present when you were?

A To the best of my recollection.

Q Was the fact that the nut had backed off first brought to your attention by another individual, any other individual?

A I don't recall.

Any deficiency that anybody would note would be brought to my attention. Any deficiencies anyplace on the ship would be brought to my attention, regardless of whether it be the Coast Guard, the Bureau, or anybody in the yard. The entire yard was at my disposal.

Q Mr. Berke, was the keeper plate or keeper bar on the lower edge of the skeg in place when you first looked at the pintle nut?

A I don't recall that. I know I put the keeper bar back.

Q Mr. Berke, would you tell us how much clearance

there is between the pintle and keeper plate as per the drawing which is being marked as Plaintiff's Exhibit 10 in evidence?

A Well, this is not quite the way the skeg is, but the skeg has a bore in it over here and I don't know what the distance between the bottom of the pintle nut and the bottom of the skeg is. But the keeper plate on the bottom goes across the bottom lower end of the stern frame.

Q Now, I am referring now to the drawing, Mr. Berke.

Is it not true that the drawing, the design for this vessel, called for 1/4 inch clearance between the keeper bar and the pintle pin?

A I don't see it there.

Q Well, I would refer you right to that (pointing).

A Okay. That's what it says.

Q Mr. Berke, was it possible to check the lower pintle nut without first removing inspection plates on the rudder?

A No, sir.

Q Why not?

A Because it's covered.

Q How are those inspection plates secured to the

rudder?

A Welded in.

Q Mr. Berke, do you know what type of locking device had been installed on the lower pintle nut prior to the 1965 drydocking?

A I assume it would be a normal keeper to keep the nut and the washer from backing offf.

Q Mr. Berke, I am not asking you what you assume. I am asking what you knew.

A I don't have any records that would indicate it. I assume that it would have had a normal keeper that broke, failed.

Q Did you find the locking device that had failed inside the rudder when you examined the rudder at the 1965 drydocking?

A I don't recall.

Q So you have no idea as to what the condition of that locking device would have been in 1965 at the drydocking?

A Other than logic would tell me that it had failed.

Q Do you know when the Columbia had last been drydocked prior to March of 1965?

A I don't have the records here. It would most

likely be in the order of approximately a year prior.

Q Were you a partner in Pillatt & Sweeney in March of 1964?

A I believe so. Yes, sir.

Q Do you know whether Mr. Sweeney attended a dry-docking in Norfolk of the SS Columbia at that time?

A I believe that I saw something last night where he did attend and insaw the stern frame, yes, sir.

Q Again, I draw your attention to your survey report and to the Jacksonville Shipyard's invoice, and in particular to Item 31 in the Jacksonville Shipyard's invoice which is on Page 9.

There is an entry there that the pin was placed in a lathe and deteriorated threads were machined off.

How much of the total thread was machined off.

A I would say very little, just the portion that was corroded and had to be cleaned up, the portion that was exposed by the fact that the nut had backed off; whatever number of turns 1 inch takes. 1 inch probably would have taken three or four turns, so these three or four turns would be corroded, and the thread had to be cleaned up.

I would say it would only have taken a relatively

light cut to chase the thread.

Q Did you see this done?

A To the best of my recollection, I must have been in the shop, yes.

Q Now, was the removed thread replaced?

A No, it wasn't. A new nut was made, probably.

Q I am talking about the thread on the pin.

A It says it was machined off. That means it's setting on the floor in the lathe now.

Q So that the threads on the pin that were machined off were not replaced, is that correct?

THE COURT: I think we might be talking about apples and oranges.

A That's correct. It was machined off. It says it was machined off.

THE COURT: All right. Wait a second.

After it's machined off, is that spot smooth?

THE WITNESS: Yes, sir. It's a clean thread.

THE COURT: It's a clean thread.

There is a thread left there, right?

THE WITNESS: Yes, sir.

Q But the thread is of lesser diameter than the original thread in that area, is that correct?

A Very, very, very slight.

Q Do you know how much was removed at Jacksonville?

A To the best of my recollection, a few thousandths.

Q How many thousandths?

A A few less, less than 10.

Q You have said that the threads were corroded; is that right?

A I am only making the assumption that it was cleaned up, since it was backed off and exposed and exposed to sea water. It would be corroded and that's why I would have machined the thread.

Q All right.

You say it had been exposed to sea water, is that correct?

A Most likely.

Q Now, is the space inside the rudder where the lower pintle nut is located supposed to be watertight?

A It should be.

Q Can you explain, then, Mr. Berke, how it came about that there was corrosion of the threads in that space?

A Very simply. It says I had some 4 foot of fractured weld. The water must have gone in through the fractured weld and filled up the space with water and the

nut backed off so it was exposed to the sea water that leaked in through the fractured weld.

Q Mr. Berke, do you have any records which would show exactly where this 4 feet of fractured weld was located on the rudder?

A No, sir.

Q So you do not know whether it was precisely over the inspection plates or in the area of the chamber in which the lower pintle nut was located; is that correct?

A It's all common.

Q Pardon me?

A The entire internal area is common.

Q Well, Mr. Berke, I would draw your attention to this drawing which has been marked as Plaintiff's Exhibit 10 in evidence, and I would ask you to be quite certain as to that conclusion.

A It has an upper and lower casting and most likely both chambers would be common, pretty close to common.

Q But you don't know whether they were on the Columbia?

A I believe they were common on the Columbia.

Q But you don't have any personal present knowledge as to whether or not they were common; is that also

correct?

A I have a personal present knowledge how my mind works and that's how my mind worked then as well as it works now.

Q I was asking whether you have a present recollection, Mr. Berke, of whether or not, in fact, on the SS Columbia, the upper and lower chambers were common?

A I would say to the best of my recollection, it was common.

Q Mr. Berke, you have mentioned that a new nut was fabricated at the Jacksonville Shipyard for the lower pintle, is that correct?

A I thought so but I see that perhaps it wasn't. It was a very minute amount cut off so the new nut was not necessary.

Q Now, Mr. Berke, would you describe the condition of the nut threads at the time the nut was removed from the pintle in the Jacksonville Shipyard in 1965?

A I would say they were quite good.

Q Well, weren't the nut threads exposed to the same sea water that corroded the threads of the pintle pin?

A No, sir. The nut threads would be on the thread of the pintle. They were just backed off approximately an inch.

Q So wouldn't part of the threads have been exposed to sea water?

A Not necessarily, no, sir.

Q Now, Mr. Berke, I would show you Plaintiff's Exhibit 11 and in this drawing you show that the top of the nut has backed clear of the top of the pintle.

A I just briefly sketched it in. I just said that it backed off 1 inch. I don't know where the top of the thread is. I might still have thread exposed above the nut.

Q In other words, today you don't know whether there was exposed thread when that nut had backed off an inch; is that correct?

A I can say there was exposed thread because I didn't machine the nut. I didn't say I did. Otherwise I would have been charged for it.

Q Let me clarify that point, Mr. Berke.

You weren't charged for machining on the nut; is that correct?

A That's correct.

Q And from that you conclude that there was nothing wrong with the nut; is that correct?

A I absolutely concluded there was nothing wrong with the nut.

Q But you have no present recollection of having inspected the nut?

A I have full recollection that if there was anything wrong with the nut I would have machined it.

Q Mr. Berke, I would appreciate it if you would answer the question as I put it to you.

Do you have a present recollection of inspecting the nut to determine whether there was deterioration of the thread?

A To the best of my recollection I definitely inspected the nut.

Q Mr. Berke, I would like to ask you one question and I would like you to listen carefully to the facts as I present them to you.

Is it true that if the nut which you had found backed off one inch, permitting the pintle to drop one inch, had in fact become completely disengaged from the pintle, and the keeper bar was not in position on the skeg, that the pintle could have dropped out?

MR. SMITH: I object, your Honor. The facts that he is referring to go back to a drydocking that happened before the drydocking Mr. Berke was on.

THE COURT: I am aware of that.

I don't think you have a foundation for that

question.

Why don't we take five minutes.

(Recess)

BY MR. WEBBER:

Q Mr. Berke, in Item 31 of your report, which is marked as Plaintiff's Exhibit 10, you indicated that horseshow keeper bars were fitted over both the upper and lower pintle nuts.

MR. WEBBER: Your Honor, I would like now to offer a similar schematic and have it marked as Plaintiff's Exhibit 12 for identification.

xxx (Plaintiff's Exhibit No. 12 was marked for identification.)

Q Mr. Berke, using the same green pencil you used in respect to Plaintiff's Exhibit 11, would you show on this schematic drawing the position of the nut and the horseshoe keeper bar after the completion of the 1965 repairs?

MR. SMITH: If you can do it, Mr. Berke.

THE COURT: Of course, if he can.

A Well, I think there is a washer under here (drawing) and that would be just to top it and the keeper would be like this, and it would be welded to keep this here nut; welded here and welded here and welded to some

other fixed arrangement to keep the nut from backing off.

MR. WEBBER: May we offer this as Plaintiff's Exhibit 12.

THE COURT: Do you object?

MR. SMITH: No objection.

THE COURT: Received.

(Plaintiff's Exhibit No. 12 was received in evidence.)

MR. SMITH: I presume you are withdrawing the second part of the question.

MR. WEBBER: Which part?

MR. SMITH: With respect to the keeper. You mentioned the keeper on the bottom?

MR. WEBBER: No.

Q Mr. Berke, was this keeper bar which, for clarity, I am going to refer to as a locking device, if I may, secured by so-called tack-welding?

A Welded, yes.

Q Tack-welding?

A Depends upon how I felt at the time or how it looked, the condition. It was welded.

Q Mr. Berke, did you see the welding done on this horseshoe keeper bar?

A I inspected it when it was completed.

Q Did you see the welding done?

A I inspected it when it was completed.

Q Mr. Berke, can you answer the question I have put to you? Did you see the work done?

A I inspected it when it was completed.

Q Did you see the work while it was being done?

A I don't recall.

Q You have no recollection of whether you were present when the welding was being done?

THE COURT: That's just what he said.

Q Mr. Berke, did you personally conduct an investigation to determine why the pintle nut had backed off or was found to be backed off at the 1965 drydocking?

A I don't recall.

Q You don't recall whether or not you conducted an investigation to determine why this pintle nut had backed off?

A That's what I said.

THE COURT: That's what he said.

Q Again, Mr. Berke, I would refer you to Item No. 30 of your report No. 1465 and it is my recollection that upon your direct examination you said that some pitting was found in the rudder, is that not correct?

A That's what I said, yes.

Q Is it not true that in your report you state that the rudder was deeply pitted?

A That's what is written.

Q What was the maximum depth of the pitting on the rudder, Mr. Berke?

A I would say an eighth of an inch.

Q Do you have a present recollection as to the actual depth of the pitting?

A To the best of my recollection, an eighth of an inch.

Q Did you measure it with a pit gauge?

A No. It's on the surface and I can relatively gauge it by eye, visually.

MR. WEBBER: Your Honor, I do not hear the witness. Did he say that he had not used a pit gauge?

A That's correct, I did not use a pit gauge.

Q Was any of the rudder plating renewed at Jacksonville in 1965, Mr. Berke?

A I don't see it in any of the reports, and I don't recall any being renewed.

Q Did you personally inspect the rudder internals at the 1965 drydocking?

A You can't examine the internals because you have

to remove the plates to examine the internals. The plates were not removed.

Q No plates were removed to examine the internals?

A That's correct, except in the area where the inspection plate was taken off for the pintle nuts.

Q Do you know whether a survey was made of the SS Columbia at Singapore after she lost her rudder?

A I've heard that there was, yes.

THE COURT: You didn't do it, did you?

THE WITNESS: No, sir.

Q Mr. Berke, just to clarify my recollection of the testimony, you have stated that you did not know what type of locking device was on the lower pintle nut prior to the 1965 drydocking; is that correct?

A I said I don't recall.

MR. WEBBER: I have no further questions.

THE COURT: Mr. Smith?

REDIRECT EXAMINATION

BY MR. SMITH:

Q Is it a practice of surveyors during a drydocking period to remove plates from the rudder to inspect the internals?

A No, sir, it is not a normal practice.

MR. SMITH: No other questions.

MR. WEBBER: Your Honor, I just have two, if I may ask them.

RECROSS-EXAMINATION

BY MR. WEBBER:

Q Mr. Berke, for the record, would you tell us the total cost of all repairs to the Columbia carried out at Jacksonville in 1965?

THE COURT: Isn't that on the document received in evidence?

MR. WEBBER: No, your Honor. I believe that document refers only to owner's repairs. I believe there were insured repairs in addition.

A I just have the total of this invoice of $43,135. I don't have what the underwriter repairs here were.

Q Did you attend that drydocking on behalf of checking underwriter's repairs as well, Mr. Berke?

A Yes, sir. I have the total here, too. In addition you would have the underwriter's repair costs here which are, apparently, is about $45,000 additional.

Q So that the grand total of the repairs would be approximately $88,000, is that correct?

A That's what it appears to be, yes, sir.

Q For the record, Mr. Berke, could you tell us

the cost of repairs done on the pintles at Jacksonville in 1965?

A I have an agreed cost of $800.

MR. WEBBER: No further questions.

MR. SMITH: No other questions.

THE COURT: I show you the second picture in Defendant's Exhibit F.

We have testimony that that was part of the palm, that the picture was taken after the rudder was off and while the ship was in dry dock at Singapore.

Is that anyplace close to the lower pintle?

THE WITNESS: No, sir. This is the upper part of the rudder, sir.

THE COURT: Does that picture show any tearing or tearing away of any part of the entire rudder assembly?

THE WITNESS: It shows a breaking of the upper casting.

THE COURT: Would that be near the upper pintle?

THE WITNESS: No, sir. The upper pintle is fitted into the gudgeon.

THE COURT: Now, let's turn away from that and get back to the lower pintle.

The lower pintle, if the plating around the skeg is whole and the nut backs completely off the lower pintle

what happens to the lower pintle?

THE WITNESS: She would drop and she should hold the top to keep her on, on the skeg.

THE COURT: Assume you have a 1/4-inch clearance as the drawings in front of you -- Plaintiff's Exhibit 10. Would it drop 1/4th of an inch or more or what?

THE WITNESS: If the keeper was only 1/4th of an inch away from the pintle pin, it would only drop 1/4th of an inch, if it maintained its position.

THE COURT: How is the keeper kept in place?

THE WITNESS: It's welded onto the skeg.

THE COURT: All right. That's all.

(Witness excused)

THE COURT: Gentlemen, do we have another witness?

MR. SMITH: I have another witness, your Honor.

D A N I E L S A L Z A R U L O, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q What is your occupation, Mr. Salzarulo?

A I am presently a private surveyor. I am the president of a firm.

THE COURT: What is the name of your firm?

THE WITNESS: D. Salzarulo Associates, Inc.

Q Prior to becoming an independent marine surveyor--is that what you testified you are?

THE COURT: That's what he said. An independent marine surveyor.

Prior to that time, what did you do, sir?

THE WITNESS: I was marine superintendent for Victory Carriers, Inc., and I was engaged there as a port engineer in 1957 and remained with them until 1968 when -- and I left as marine superintendent.

Q Did Victory Carriers have any T-2 type vessels?

A Yes.

Q How many did they have?

A Eleven.

Q Have you personally made any inspections on T-2 tankers,and we are referring now to the rudder and stern frame area?

A Yes, I have.

Q Could you estimate for us about how many you have inspected?

A During that period, about thirty.

Q Did you examine the survey report of Mr. Berke, Plaintiff's Exhibit 7, with respect to the rudder and stern frame?

A Yes. I perused these reports.

THE COURT: Those reports being Plaintiff's Exhibits 7 and 8.

Q Did you also examine Defendant's Exhibit G which is the American Bureau of Shipping report for the March 1965 drydocking?

A Yes, I did.

Q And you heard Mr. Berke's testimony here this morning, is that correct?

A Yes, I did.

Q Is there anything that you would have done to make the Columbia seaworthy, the rudder, that was not done at the 1965 drydocking?

A Nothing more than what I've read in these reports.

Q From that report there, it shows that there was some staging erected around the rudder. Is that customary?

A Not if it's just a routine drydocking. Staging is not erected around the rudder.

Q Was it required to open up the fair water plates to examine the pintle nuts in 1965?

A No.

MR. LOESBERG: Your Honor, I just make an objection. We are going onto certain things. There is no

foundation about the '64 problem, about anything specifically. Or under what circumstances.

You haven't said -- well, I object to it. There is no foundation.

THE COURT: I'll let it go.

We are going from generalities, I think, into specifics. It may or may not generally work, but let's see if it does.

Go ahead.

Q Was it the practice, as you know it with ship owners, to take off the inspection plates at every drydocking of the vessel? Talking about the inspection plates on the rudder.

A No, it was not.

Q What does the phrase, "pintle nuts hardened up," as contained in the American Bureau of Shipping report, mean to you as an owner's representative?

A It so states in the ABS report here -- it means that he witnessed the hardening up of the pintle nuts at the time of the drydocking.

MR. LOESBERG: Objection.

THE COURT: I understand. It's not what he witnessed.

Tell us what the words mean.

THE WITNESS: It means that a man with a sledge hammer put a wrench on the nut and hit the nut as hard as he could until they -- he and the regulatory boards are satisfied that the nut is hard in place.

THE COURT: In other words, it's forced into the ultimate position that it can make, is that right, the last twist?

THE WITNESS: That's correct.

Q Would you describe to the Court what type of inspection you as an owner's representative made on a T-2 rudder and stern frame in around 1965 when you were inspecting vessels?

A After the vessel is placed on the dry dock, in company usually with the regulatory boards, ABS or Coast Guard, you will visually examine the rudder. You had clearances taken of the -- between the pintle pin and the bearing, the bush, and you evaluated the situation such as if the rudder was leaning, you would determine where it was leaning from take whatever appropriate action to repair this damage found, and you would test the rudder after you had completed the repair.

Q Is it customary to remove the rudder at a drydocking?

A No.

MR. SMITH: I have no other questions, your Honor.

CROSS-EXAMINATION

BY MR. LOESBERG:

Q Sir, did you ever work or have a desk in the office of Pillatt & Sweeney?

A Yes, I do.

Q How long are you associated with Pillatt and Mr. Sweeney?

A I have a separate company. I rent space from them. I have it for five years.

Q Five years. And what years do they cover?

A '68 to the present date.

Q Now, you said you were with Victory Carriers and you had twelve or so T-2's, is that right?

A Yes.

Q Let me ask you a question:

In this case, how many rudders did you lose off the T-2's for Victory Carriers?

A None.

Q How many times did you have the nut on the pintle back down?

A Well, to my recollection I can remember maybe

one.

Q Well, if a rudder, if a nut like that that we are speaking about backs down, do you investigate to find out what the cuase is, to prevent it again?

A Well, the investigation takes place simultaneously with the repair.

Q I am not speaking about that.

I am speaking about you are an owner's representative and you have made some statements about proper inspections and care of ships.

I am saying, if you have a casualty with respect to something like this, do you determine to find out what was the cuase of it so it will not happen again?

MR. SMITH: Objection. There is no proper foundation for that.

MR. LOESBERG: This is cross-examination, Mr. Smith. I would appreciate it if you let me go forward.

THE COURT: He is entitled to make an objection.

MR. LOESBERG: I'm sorry. I will withdraw that.

THE COURT: I would think so.

I'll permit it. Go ahead and answer the question.

Would you have made an investigation?

EHE WITNESS: Yes.

Q Now, with respect to the fact you are talking about nuts, hardening up of nuts, do you know that in 1964 they also hardened up the nuts of the pintles, pintle nuts?

THE COURT: I'm sorry. I don't understand the question.

Q I said, in 1965, there was some testimony about hardening up the pintle nuts, and the question, the next question -- and I'll rephrase it to be more clear:

Before coming here to testify, did you know or did you read that the same thing was done in the '64 drydocking?

A Well, I believe so, yes, because that was the, at the time the -- well, I can't recall right now that particular --

THE COURT: Do we have the '64 report? Has anyone offered it?

MR. SMITH: The '64 report is not in evidence, your Honor.

THE COURT: All right.

MR. SMITH: There is a survey.

THE COURT: Okay. It's not in evidence. I won't show it to him.

Q Well, if we assumed that on the previous dry-docking, the nuts had to be hardened up, one year before, and then hardened up during '65, what would cause the necessity to harden up the nuts?

A Well, several things. Vibration could cause the tack welds to fail on the keepers and the nut to back off maybe one turn, two turns, whatever the case may be.

To the extent the pin is subject to vibration and how the rudder is being used.

This is one of the things that you would think about.

Q How about the keeper bars? Do they sometimes come loose or fall off during the course of the vessel going to sea over a period of time, or working in a seaway?

A Well, I've seen one or two that have been broken and loose, but that's about all.

Q It would also be good practice, I assume, assuming that the rudder came off or if one did come off, to have a survey subsequent to determine what happened; is that correct?

A If one came off.

Q Right.

A To have a survey as to the reason why it came off?

Q Right.

A Yes, but as these things are found, during a survey, and a survey -- that is with more than one person.

Q I am just asking the question --

A And you will see that and --

THE COURT: Hold it. You are talking about applies and oranges.

You are talking about, I believe, in your answer, about a pintle nut coming off, but that is not the question here.

The question counselor asked you was, if the whole rudder comes off.

A If the whole rudder comes off? Is that what you are saying? I misunderstood you.

THE COURT: Absolutely. That's why I wanted to get into it. The whole rudder comes off.

Q I wasn't clear on it.

To preface that, let me ask you this:

Maybe you are not aware of it. Did you know that on a certain voyage in 1966, the rudder came off the vessel called the Columbia?

A Yes, I do.

Q And at any time preparing for this, have you

read any survey reports after the rudder came off?

A Yes. I read the report where they replaced the rudder. I believe I did.

Q And your tesitmony is that, while at Victory Carriers, you never lost a rudder?

A No, we never lost a rudder.

Q Did you go to sea as a chief engineer?

A No. As an engineering officer in the Navy.

Q What type of ships were you on then?

A Destroyers.

Q Did you ever sail on a T-2?

A Yes, I did.

Q How long did you sail on a T-2?

A Five months.

Q In what capacity?

A As third engineer.

Q Did you lose a rudder on that one?

A No, I did not.

Q Is this the first one that you ever heard where a rudder came off of a T-2?

A No, I've heard of T-2's losing rudders, yes.

Q Before?

A Yes, I have.

Q And how many times have they lost rudders before?

A Well, from what I understand, they were pretty notorious.

Q What was the reason?

A Well, the problems within skegs.

Q Were there any other reasons?

A That was the only one I knew about.

Q How did the skeg cause the rudder to come off?

A The skegs were fracturing.

Q Is there any other reason that you might know of?

A Not that I know of, no.

Q About how many of these T-2 rudders did come off that you are acquainted with?

A I have no idea of statistics. I've heard of several.

Q Did you have a chance to read any of the information or surveys subsequent to the loss of the rudder on the Columbia in this case?

A Well, I read this report here.

THE COURT: The witness is referring to Plaintiff's Exhibit 7.

Q The Pillatt & Sweeney report?

A Yes.

Q Any one that might have been done out in Singapore

where the vessel pulled into a dry dock to make the repairs, et cetera?

A I don't know. I read a few reports, but I don't recall that particular report.

MR. SMITH: May I help out, your Honor?

MR. LOESBERG: That's all right. I am asking on cross-examination.

THE COURT: If he doesn't remember, he doesn't remember.

Q Now, you stated that the surveys that you heard about or were asked about on direct examination is what ordinarily would be done; is that right?

A What would ordinarily be done, yes.

Q Did you assume in that survey that the ship had substantial rudder damage in 1964, before the survey in 1965?

A Would I assume?

Q No. What I am trying to say is you said on direct examination that the survey that Mr. Berke did in 1965 was one that you said that you agreed to.

A That's correct.

Q I am saying, are you aware that in 1964, prior to 1965, the vessel had considerable rudder damage?

A Yes.

Q Do you know, as a surveyor, any reason why the lower nut would start backing off?

A The only reason I can --

MR. SMITH: He answered the question before.

THE COURT: I think he has.

MR. LOESBERG: No. I didn't ask him that question before.

THE COURT: If you didn't, maybe you weren't listening but it sure sounded like it to me.

You asked him why it would back off.

MR. LOESBERG: I said the keeper bar before, your Honor.

Did I say the nut?

THE COURT: You said the nut and he told you that it backed off because of vibration and the way the rudder was used.

Q Could it back off because of deterioration of a nut?

A Of the nut? No.

Q It could not?

A No, sir.

MR. LOESBERG: I have no further questions of this witness.

MR. SMITH: No other questions, your Honor.

THE COURT: All right. Step down.

(Witness excused)

THE COURT: Do you have anybody else?

MR. SMITH: No one else for today, your Honor.

I would like to offer in evidence at this point United States Coast Guard certificates of inspection for the Columbia. They are certified copies, public documents, and they are made in the course of the inspection.

THE COURT: If they are public documents, it's all right.

Mark them in evidence.

I happen to see that there are other people around the courtroom. When are we going to hear from them?

MR. SMITH: They are not my witnesses, your Honor.

THE COURT: Mr. Loesberg, the other witnesses that we have in the courtroom, when are we going to hear from them?

MR. LOESBERG: Do you want us to go ahead with our witnesses?

THE COURT: Sure.

MR. LOESBERG: Who do you intend to call after I put in my case?

MR. SMITH: The only one I intend to call on the facts is Mr. Sweeney who attended the 1964 survey and perhaps a rebuttal witness.

THE COURT: A rebuttal witness in the sense of an expert, is that it?

MR. SMITH: Yes.

(Defendant's Exhibit I was received in evidence.)

THE COURT: Your expert witnesses depend upon Mr. Sweeney's testimony?

MR. LOESBERG: Yes, your Honor, they do.

THE COURT: When can we have Sweeney here?

MR. SMITH: Mr. Sweeney will be available a week from Monday, your Honor.

THE COURT: I can't take it a week from Monday, I'll tell you that much.

Will he be available thereafter?

MR. SMITH: I believe so, but they travel quite a bit.

THE COURT: I've noticed.

I've only been on the bench two years and it seems like every admiralty case involves people at least from the Indian Ocean.

Why don't you, Mr. Smith, call my chambers

sometime this afternoon? At this point I guess you have gotten to know my law clerks -- and we'll work out a date. All right?

Now, in connection with that, the clerks will give you a choice of date and then I want you to get together with Mr. Loesberg and figure out which is the one that both of you can make. All right?

MR. LOESBERG: Fine. Your Honor, may we know -- Mr. Smith, we have told you our experts and is there anybody you didn't tell us about before?

MR. SMITH: I really haven't decided because I have to know what the testimony is going to be.

MR. LOESBERG: You mean our testimony?

MR. SMITH: I have to hear yours before I decide what I'll have on rebuttal.

(Adjourned sine die.)

THE EASTERN MARINE & FIRE INSURANCE COMPANY,

Plaintiff,

-against-

S. S. COLOMBIA, her engines, boilers, etc., Oriental Exporters, Inc.,

68 Civ. 4788

Third Party Plaintiffs,

-against-

John Pemberton Masse, an underwriter at Lloyds and Indemnity Marine Assurance Co., Ltd.,

Third Party Defendants.

October 2, 1974
10:00 a.m.

TRIAL RESUMED.

PRESENT:

Mr. Loesberg, Mr. Webber and Mr. Smith.

(Case called.)

THE COURT: All right, gentlemen, call your witness.

MR. SMITH: Your Honor, I have something to take care of just before I call my witness.

I have here a memorandum, your Honor, by Mr. W. Baxter which Iwould like to have marked as Defendant's Exhibit J.

(Defendant's Exhibit J was marked for identification.)

THE COURT: Have you produced the material in--

MR. SMITH: Your Honor, all of this material was produced on discovery--

THE COURT: I'm sure it was. I'm just talking about today.

MR. LOESBERG: I just want to see the memorandum. It may have been. I don't know.

MR. SMITH: I'm not offering it in evidence at this time, your Honor. I have a statement to make on the record.

THE COURT: Go ahead.

MR. SMITH: Your Honor, Mr. Baxter was the owner's representative at the Singapore Repair Yard where the damage to the Colombia was repaired and shortly after that he was killed in an automobile accident before the discovery was started in this particular case, and this is all we have from Mr. Baxter with respect to that drydocking, the report that I have marked there, and I have no objection to any part of that going in if counsel for the plaintiffs want to put it in.

THE COURT: All right. Let me ask one further question.

Was a survey done on behalf of plaintiffs also

at this time?

MR. LOESBERG: At that time the plaintiffs were not a part of it. There was a claim for general average. They didn't know about it. If we had an opportunity, we would have had one. We weren't even in the case then, but there was no survey done at Singapore on behalf of the cargo interests.

THE COURT: Do you object to this survey, this memorandum? Do you want to have an opportunity to go through it?

MR. LOESBERG: I would like to have that opportunity. There may not be an objection to it.

MR. SMITH: May I just point out to the court that since the cargo interests were notified immediately and put down a deposit, they knew of the casualty to the vessel and knew where the vessel was during the period of repairs.

The general average itself was not questioned until two years after the casualty, so this is perhaps the reason there was no survey at the time of the casualty.

MR. LOESBERG: It takes some time to publish the statement so we didn't see what was in it until--

THE COURT: This amazes me. It seems like everybody who comes into this court believes that I have

no knowledge of anything other than the securities laws, perhaps.

All right, call your witness.

MR. WEBBER: Your Honor--

THE COURT: You are objecting to it?

First read it before you object to it. You may be pleasantly surprised.

(Pause.)

THE COURT: All right, swear in the witness.

JAMES E. SWEENEY, called as a witness by the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q What is your occupation, Mr. Sweeney?

A Marine surveyor and consulting engineer.

Q Would you state your educational background, please?

A In essence, I graduated from Kings Point in 1944, sailed with Marine Transport until approximately 1948 and for approximately a year and-a-half was chief engineer.

I went to work for the government at the time it was Army Transport, which is now Military Sea Transport, and at that job I was estimator, repair inspector,

planner, etcetera.

In 19--

Q Just a moment. In what field?

A Ships, the repair of ships.

In approximately 1951 I worked for Victory Carriers, Inc., a company owned by Onnasis. In that position I was port engineer and later marine superintendent in charge of approximately 22 vessels.

Following sometime there I went to work for U.S. Salvage Associates, which are technical advisers to the American Underwriters.

Following approximately two years there, around 1957, I joined the firm called now Pillatt and Sweeney Corporation. At that time, there was only a Mr. Frank Pillatt. I am presently employed in the same place.

Q In the course of your occupation as a marine surveyer and marine consultant, have you had occasion to examine the stern section of T-2 type vessels?

A Yes.

Q About how many have you examined over the years?

A Probably 100 to 150 as a rough guess, in that area.

Q Would you describe the examination of the stern section of a T-2 type vessel when it is on drydock?

A The examination is rather a routine examination which is done periodically usually in conjunction with the Coast Guard, if it is an American vessel and in a classification which is the American Bureau or Lloyds Register.

It generally includes the taking of an examination of clearances, pintle clearances, clearances of the tailshaft bearing, and an examination of the skeg which is the general support and guide for the bottom and the rudder pintle. I examine that for fractures or distortions.

I examine the rudder plating itself for any fractures or distortions, wear and tear, etcetera.

I examine the propeller of the vessel for any missing blades or damaged blades or worn blades.

A general examination of the plating, the attachment plating, etcetera, in the stern area which may tie into the stern frame.

Q Now, with respect to the interval between drydocking, what was the practice of drydocking with respect to these T-2 vessels?

A To my knowledge, it was an 18-point drydocking required.

Q What does that mean to you as a consultant?

A That means for the purpose of classification,

the Coast Guard establishes the rules for drydocking the vessels. For the vessel's services to remain in force, the vessel must be inspected at least once every 18 months.

Q What is the practice with respect to the interval of inspections of vessels?

A At that time?

Q Yes.

A Generally speaking, some owners used the entire 18 months, some a little less, depending on the schedule of the vessel.

Q Now, you attended the Colombia in March of 1964 while the vessel was in drydock in Norfolk, Virginia; is that correct?

A That is correct.

Q Do you have a record of that drydocking?

A I have a notebook.

Q Do you have that with you today?

A Yes, I do.

Q Would you produce it, please?

A Yes, sir.

MR. SMITH: Your Honor, I have taken the relevant pages and had them copied and have given a copy to counsel.

THE COURT: Mark them.

MR. SMITH: I would like to substitute a copy for the record.

THE COURT: Surely. You don't object to substitutions of the copy?

MR. LOESBERG: No, your Honor, we don't object to it.

(Defendant's Exhibit K was marked for identification.)

THE COURT: Defendant's Exhibit K, which counsel is now showing to you, is a copy of that portion of your notebook which deals with your examination of the Columbia; is that correct?

THE WITNESS: Yes, sir.

THE COURT: Mr. Smith, you are offering it in evidence at this time?

MR. SMITH: Yes, I am offering it at this time.

THE COURT: Mr. Loesberg?

MR. LOESBERG: We don't object to its receipt in evidence.

(Defendant's Exhibit K was received in evidence.)

BY MR. SMITH:

Q Would you tell the court what you did at that drydocking to the best of your knowledge?

A Well, that drydocking was treated more like,

more or less like any other drydocking. We went through the inspection of the bottom of the vessel and the stern area of the vessel in a manner more or less previously described.

Q Do you have any notes as to what you did specifically on this drydocking?

A To an extent.

Q Would you refer to them and tell the court what your notes show about what was done with respect to this particular drydocking that you attended?

A On this particular drydocking the bottom plating was examined and found good, generally free of indents and so forth.

Q Just to save time, would you just testify with respect to the rudder, the skeg and the stern frame area?

A Yes. Well, this plating I'm speaking of was the plating in the general area of the stern frame area.

Q All right.

A The next thing was, the rudder was examined. This examination was jointly carried out with the American Bureau of Shipping and two United States Coast Guard inspectors. It was a joint survey.

At that time, we found that the skeg of the vessel was fractured in numerous locations on the starboard

side at the radius of the shell plate.

It was also fractured on the port and starboard side where the plate was welded to the skeg.

The palm appears to be parted on the forward end.

Now we surveyed the rudder and propellers, and the rudder we found to be in good condition, which I have stated in my reports. We found no problem with the rudder except for one small leak in the shell plating which is very common for a T-2 type rudder.

If you will just bear with me and let me glance at my notebook I can continue.

(Pause.)

A At the initial survey when we found the damage, to the degree that it takes in any examination, once we found that the skeg was fractured, the skeg was then condemned by the American Bureau and by the Coast Guard because there were too many fractures in it to repair it.

At that point we set in motion, at the shipyard, removing the skeg and renewing the skeg, taking the rudder to the shop, and in the shop these components were more carefully examined.

Q What components are you referring to?

A I'm speaking of the rudder, the pintles for the

rudder, and the bushings for the rudder pintles.

Q Now, I have the two survey reports here. I would like you to identify them, if you can.

The first one is Report 1353.

(Defendant's Exhibit L was marked for identification.)

Q Can you identify that, Mr. Sweeney?

A Yes, sir.

Q What is it?

A This is a report to the owners regarding my attendance of the Steamship Colombia in Norfolk in March and April 1964.

Q With respect to the rudder, what comments do you have there?

A Comment A. Rudder. The rudder was noted in good condition. The top pintle was renewed completely at the top and bottom with Micarta bushings.

THE COURT: Do you object to this being received?

MR. LOESBERG: I don't object it.

THE COURT: All right. Mark it.

(Defendant's Exhibit L was received in evidence.)

MR. SMITH: I have another survey here which is 1352. May I have that marked as Defendant's Exhibit N?

(Defendant's Exhibit N was marked for identification.)

MR. WEBBER: Your Honor, may we have a moment to look at Defendant's Exhibit L in evidence? We have not seen it before this date.

THE COURT: Surely.

(Pause.)

THE COURT: Do you object to Defendant's Exhibit M?

MR. LOESBERG: No objection.

THE COURT: Received.

(Defendant's Exhibit M for identification was received in evidence.)

MR. SMITH: I have here the repair bill for the repairs that were made at Norfolk Shipbuilding and Drydock which I would like to have marked as Defendant's Exhibit N.

MR. LOESBERG: You can mark that as an exhibit also, your Honor. We have no objection.

THE COURT: You have no objection to its receipt in evidence?

MR. LOESBERG: No, your Honor.

THE COURT: Received.

(Defendant's Exhibit N for identification was received in evidence.)

BY MR. SMITH:

Q Mr. Sweeney, were the repairs as set forth in Exhibit N made to the bushings?

A Yes.

Q And how about the repairs that are set forth in Exhibits M and L?

A Yes.

Q Who was in charge of making those repairs?

A I was.

MR. SMITH: May I have this marked, please?

(Defendant's Exhibit O was marked for identification.)

MR. SMITH: Your Honor, this is the American Bureau of Shipping report covering the drydocking in March of 1964.

THE COURT: Show it to your opponent, please.

MR. LOESBERG: We have no objection to the authenticity of the document, your Honor. I would just like to comment that the man who made it is apparently not going to be called as to the weight of it.

THE COURT: Well, do you object to it? That's all I want to know. You can comment as to the weight of it some other time.

MR. LOESBERG: No objection.

(Defendant's Exhibit O for identification was

received in evidence.)

Q Would you describe, Mr. Sweeney, how the repairs were done on the rudder and skeg of the Colombia in March of 1964?

A Well, briefly, the skeg required renewal so the rudder was removed, the pintles were removed, which secured the rudder in place, the rudder was disconnected, and the rudder stock was disconnected and the components moved to the machine shop.

The damaged skeg was removed and discarded. Measurements were taken from it as required to machine a new skeg. The new skeg was obtained by the owners, machined, re-installed. The rudder was tested. One leak was found and repaired and retested.

The alignment checks were taken from the carrier bearing inside the steering engine room, down through the upper gudgeon, and the lower skeg gudgeon, the alignment ascertained, machined correctly, everything re-installed back in true alignment.

There were some alterations that we made when we did this repair different from the original.

MR. SMITH: I have here a drawing which I will ask to be marked as Defendant's Exhibit P for identification.

(Defendant's Exhibit P was marked for identification.)

MR. LOESBERG: No objection, your Honor.

(Defendant's Exhibit P for identification was received in evidence.)

BY MR. SMITH:

Q Will you describe what the difficulty was in the skeg?

THE COURT: No. First tell me what Exhibit P is? That's a drawing, right?

THE WITNESS: Yes, sir. Exhibit P is a drawing detailing the lower stern frame area and the attachment plates to the lower stern frame area.

THE COURT: For the Colombia, right?

THE WITNESS: For the Colombia.

THE COURT: We have had some other documents, counsel, on general T-2 tankers. This one is different; is that correct?

MR. SMITH: I was going to bring that out now as to how it differs.

THE COURT: All right. Go ahead.

BY MR. SMITH:

Q Will you tell the court how it--first of all--will you look at Defendant's Exhibit E, which is a drawing

of a T-2 stern section. Does that represent the stern section of the Colombia as you saw it in March of 1964?

A Yes, generally.

Q We are talking about, in your drawing, the area that has been marked out in a heavy red pencil; is that correct?

A That is correct.

Q Would you tell the court what the differences were in the changes that were made in the skeg at the time the skeg was put in?

A We made four basic changes which I will refer to as A, B, C, D.

A: We increased the thickness of the plates which the A-21--whatever this plate is designated as.

Q Would you mark the plates A and B then? I mean the ones you refer to.

A (The witness marked.)

Q Would you mark that A, please?

A (The witness marked.)

Q And the other plate as B.

A (The witness marked.)

A I believe the American Bureau report actually states the plate numbers which I don't have.

THE COURT: It doesn't much matter. Those are

the plates.

BY THE COURT:

Q You say you made them thicker?

A We increased the thickness to one-inch plates.

Q What was the original thickness?

A I don't recall, sir.

BY MR. SMITH:

Q Can you tell by the drawing underneath what they were?

THE COURT: The drawing underneath being Defendant's Exhibit E.

A This drawing doesn't show the plate thickness.

BY MR. SMITH:

Q To the best of your recollection, what are they normally on a T-2 in that area?

A It would be my recollection that it would be either 7/8 or 3/4. I'm not sure which.

The next change that we made--and this I might add--this change was made in conjunction with the American Bureau, the United States Coast Guard and the shipyard naval architects and approved by all concerned prior to us making these changes.

Now change B: The plates which I have referred to above were extended further aft on to the stern frame

itself. That would be change B.

Q What was the purpose of that change?

A The purpose of that was to minimize lateral movement of the stern frame.

Q All right.

A Change C was within the afterpeak tank. We installed one additional horizontal stiffener.

Q Where would that be?

A That would be right in here, which is shown on this drawing, right across here connecting from this floor over to the stern frame.

Q Would you put a line around that stiffener, please?

A (The witness marked.)

Q And would you mark that C, please?

A (The witness marked.)

And change D was to install an additional flat bar on the port and starboard sides of the new skeg.

Q Where would that be?

A That would be right as shown here.

Q Would you mark those two areas as D and E, please?

A (The witness marked.)

They are both the same. One is port and one is

starboard.

Q Then mark one D.

A (The witness marked.)

Q Now, would you just put a line all the way around that area that you showed the court a minute ago?

A A line all the way around the area?

Q Yes, where the flat bar plate is.

A (The witness marked.)

Q Could you limit it to the plate itself?

A Well, they already have a line where the plate is. That is a sketch of the plate right there.

Q Were there any other changes?

A No, sir. Not as I recall. Those were the four basic changes.

MR. SMITH: Does your Honor have a question?

THE COURT: No. Go ahead.

Q What was the purpose of making those changes?

A The purpose was that T-2 tankers, through the years, had some problems with skegs in general and whenever there was a basic renewal of a stern frame or something, it was always desirable to strengthen up the area which had shown weakness in the past and in some manner try to strengthen it up so as to be able to withstand external forces and damages to a better degree.

Q How did that new skeg hold up?

A To my knowledge, it is still there.

I might add that there was no really established system of strengthening skegs. Everybody had an absolutely different idea. There was no proposal or remedy from the American Bureau. This was something that we sat down and suggested and ironed out and came up with which was approved by the American Bureau. There were other ways that people have done it but this was the only one that I have done this particular way.

Q With respect to the pintles--you may refer to the survey reports or your notes if you like--what was done with respect to the pintles when the rudder was re-installed?

A The top pintle was renewed completely with a high hat and new Micarta bushing.

The bottom pintle, as I recall, had no damage to it and we merely renewed the Micarta bushing for that pintle.

Q With respect to the palm, what work was done on the palm?

A When the rudder stock and the rudder itself were in the machine shop, two things basically were done. They were checked for true and light machine faces because

a certain amount of light corrosion or pitting was noticed near the edges of the palm. This was taken out by machining as a matter of the prudent thing to do at the time.

The second thing that was done was that the entire area was die-checked or metal particle-checked or magnifluxed in some way to ascertain that there was no small minute cracking or fracture of any type which would not be detected by the eye.

Q Is that a common procedure in ordinary dry docking?

A Not ordinary dry docking. It is a common procedure where you have a damage and you have unknown conditions which you might not be able to see with your naked eye.

Q When the rudder was re-installed, did you witness the re-installation or any part of it?

A I witnessed several parts of it. I witnessed the fitting of the new pintle, that is, the fitting of the pintle into the rudder itself.

I witnessed the hardening of the pintle nuts.

I witnessed the final alignment checks before the rudder was installed.

Also, after the complete installation, I

witnessed both from the steering engine room and on the dry dock, that the rudder swung port and starboard to its full operating extremities and free of any binding or free of any unusual conditions of any type prior to the vessel being raised back into the water.

Q Was there anyone else there at the time that that test was made?

A I don't recall that. My notes don't show that. All during the inspection period American Bureau and the Coast Guard attended at various times.

MR. SMITH: No other questions, your Honor.

CROSS-EXAMINATION

BY MR. WEBBER:

Q Mr. Sweeney, while you have them before you, I would refer you to Defendant's Exhibit P and Defendant's Exhibit E and I would ask you whether it is not correct that the lower gudgeon area on the renewed skeg remained as per the original drawing after the 1964 repair?

A You are speaking of this part right out here?

Q No. Let me draw a circle around the area to which I am referring.

I will put my initials next to that, if I may.

THE COURT: Sure. Go ahead.

Q And I ask you again, Mr. Sweeney, if that area

didn't remain the same as the original design after the 1964 repair?

A Yes.

Q Thank you.

Now, also, Mr. Sweeney, you mentioned that back in 1965, 1966, some owners dry docked their vessels of a T-2 type every 18 months and others docked them at shorter intervals depending on schedules.

Isn't it true that some American operators dry docked their T-2 and T-3 type vessels annually as a matter of practice?

A Yes, sir.

Q Now, we have had Mr. Herman Berke testify before the court. I believe you know Mr. Berke; is that correct?

A Yes, sir.

Q Was Mr. Berke a partner of yours in 1965?

A I don't recall the exact year he was a partner but for two or three years it was in that area.

Q Do you recall when he left Pillatt & Sweeney?

A Not exactly; no.

Q Did Mr. Berke go to Jacksonville in March of 1965 to attend the Colombia at your direction?

A I have no recollection of that. I have no way of recalling that at the moment.

Q Let me ask you this then:

While Mr. Berke was in Jacksonville, did he communicate with you in your office as to rudder repairs being carried out at the Jacksonville yard?

A I don't recall one way or the other, sir.

Q Do you know whether he communicated with anyone else in your office as to the rudder repairs being carried out at the Jacksonville yard?

A I would guess if he was there he talked to somebody. He might have talked to me but I don't recall. We had so many vessels in those days I can't remember any particular one.

Q Well, when you said you had so many vessels in those days that you can't remember any particular one I gather, Mr. Sweeney, then that your testimony here today is based solely upon your general practice and procedure and the information contained in your notebook; is that correct?

A To a degree. Vessels I attended I can remember. Ones I didn't attend, and either Mr. Pillatt or Mr. Berke attended, was merely general knowledge that they were attending them.

Q I see.

A In other words, our organization is not set up

where there is a central boss. We were all basically equal pertners and we went out and did our work and each of us was cognizant of where the other people were and that's, generally speaking, the extent of it.

MR. WEBBER: Your Honor, I would like to have another one of these schematic drawings marked as Plaintiff's Exhibit 13 for identification.

(Plaintiff's Exhibit 13 was marked for identification.)

Q Mr. Sweeney, I show you a rough sketch of a pintle of the type used on the S. S. Colombia, and I would ask you, sir, using this green marking pencil, if you could sketch on the representation of the pintle the type of locking device that was used in respect to the nut and pintle when the ship came into dry dock in March of 1964.

Can you recall what type of device was used?

A I don't even remember if there was one, sir.

Q Well, now, I would then ask you a similar question in respect to the completed repairs at Norfolk in 1964. Can you recall what type of locking device was put on the upper and lower pintle nuts after the completion of the repair?

A No, I can't. After I witnessed the pintle nuts and I was satisfied that they were in place, I didn't,

after that, inspect for a locking device.

Q So you have no idea of what type of locking device was put on; is that correct?

A That is correct.

MR. WEBBER: I have no further questions, your Honor.

THE COURT: All right; step down.

(The witness was excused.)

THE COURT: We will take a ten minute break. I would like to see both sides inside.

(Recess.)

THE COURT: All right, next witness.

EMANUEL SILKISS, called as a witness by the Defense, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q Would you state your occupation?

A I am presently Vice-President and Chief Metallurgist with Lucius-Pitkin, Inc., here in New York.

Q How long have you been a metallurgist?

A Since graduation from the university in 1950.

Q What university?

A The University of Michigan.

I received there a Bachelor of Science degree in

metallurgical engineering, chemical engineering; Master of Science in metallurgical engineering.

Q Have you, in the course of your business, inspected fractures in ship's rudders for ship owners?

A I don't know whether it was for ship owners but for independent parties on occasions.

Q Did you, at my request, examine the photographs which have been marked as Exhibit F in this action?

A Yes, I have.

Q Do you have an opinion, Mr. Silkiss, as to how that fracture occurred based on what you see there?

A As best I can determine from what is available in the photographs, it appears to me that the fracture surface is the result of loading beyond the capacity or strength of the vessel.

Q What does that mean, "loading beyond the strength"? How would that occur?

A Well--

Q Could it be an internal force or an external force?

A An external force.

MR. SMITH: No other questions.

CROSS-EXAMINATION:

BY MR. WEBBER:

Q Mr. Silkiss, you referred to the manner in which this fracture may have occurred. Is that what is commonly called an impact fracture?

A Well, in this type of material, which is a rudder stock, the palm area would be made of cast steel. It may have resulted from impact or may have resulted from a steady pressure, just over-loading it.

Q Well, let me ask you this just to clarify the record, if I may: It is not then what is classically called a fatigue fracture?

A Not in the portions of the photographs that are shown here. I can't see any evidence of fatiguing.

MR. WEBBER: I have no further questions, your Honor.

BY THE COURT:

Q In Exhibit F, toward the right of the first picture is a spot where it appears that the metal was sheared off; is that correct?

A Well, sheared--you are using a technical term. I would say torn off. Shearing would be like a scissor separating two pieces. This would be more of a tearing action.

Q All right. Now, based upon these photographs, is it your opinion that that didn't occur through any metal fatiguing?

A The only areas that I can see on here are these--with any distinction that I can draw a conclusion from--is this area that you are referring to at the right, and that is not metal fatiguing.

Q That's a tearing action?

A That's a tearing action.

Further evidence of what I would think of this loading, excessive loading, is the interface between the two palms where it is either seam-welded or caulked, which is also cracked. This is on the second photograph. And if it were fatigued, that wouldn't occur. This would be as a commensurate with the tearing of the rudder.

We would be actually looking at it this way with the rudder hanging below, and these cracks here would indicate more excessive loading. This is usually seal-welded or caulked to prevent ingress of sea water to the bolts. This thing would be pulled away.

THE COURT: All right.

MR. WEBBER: Your Honor, on that basis I have one further question of Mr. Silkiss.

RECROSS-EXAMINATION

BY MR. WEBBER:

Q Mr. Silkiss, would the fracture that you have examined in Defendant's Exhibit F be commensurate with, for example, a rudder swinging back and forth under the pressure of the seas?

A You mean in normal operation?

Q No. Assuming that the rudder, say, were disengaged at the lower attachment point so that it was in a position to swing back and forth almost like a pendulum.

A Yes, sir, that would certainly apply excessive load.

MR. WEBBER: Thank you.

Your Honor, I have no further questions.

THE COURT: All right.

(The witness was excused.)

MR. SMITH: Your Honor, I have a survey report by Ritchie & Bisset who represented the hull underwriters at the survey at Singapore after the casualty which I would like to have marked for identification.

MR. LOESBERG: We have already agreed to these back in chambers, your Honor. Perhaps we can move the trial along with these exhibits.

THE COURT: All right.

(Defendant's Exhibit Q was received in evidence.)

MR. SMITH: Your Honor, with respect to the surveyor who performed this survey, Mr. Strauss, I spent considerable time trying to contact him but unsuccessfully.

He has since retired and as of this morning I have not received any information as to where he is.

THE COURT: This is the gentleman from Singapore, right?

MR. SMITH: Yes, sir.

MR. LOESBERG: Your Honor, I don't know why the comment was necessary. Can I comment also?

THE COURT: Surely.

MR. LOESBERG: There has been notice of issue as I understand following this case in November of '72.

He has had, since the complaint was filed and cross-claims, an innumerable time of eight or nine years to take this man's deposition at any time.

MR. SMITH: That is also true of the plaintiff, your Honor.

THE COURT: That applies to everybody.

MR. LOESBERG: Well, he wouldn't testify for us.

MR. SMITH: And I have the last Exhibit, R, which is the American Bureau of Shipping report.

(Defendant's Exhibit R was marked for identification.)

THE COURT: Do you object to this one?

MR. LOESBERG: We have already agreed to those, I believe.

THE COURT: You have got to put it on the record that you have no objection.

MR. LOESBERG: No objection. I'm sorry, your Honor.

(Defendant's Exhibit R for identification was received in evidence.)

MR. SMITH: Your Honor, Mr. Armstrong, who was the American Bureau of Shipping surveyor is still in Singapore but I saw no reason to call him for this trial.

THE COUFT: All right. Fine. Do we have any other witnesses?

MR. SMITH: No other witnesses for the defendant.

THE COURT: Any further witnesses?

MR. WEBBER: Yes, your Honor.

Your Honor the Plaintiff calls Mr. Edward Ganly.

EDWARD FREDERICK GANLY, called as a witness by the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WEBBER:

(Plaintiff's Exhibit 14 was marked for identification.)

Q Mr. Ganly, what is your present employment?

A I'm a marine surveyor and naval architect.

Q What are your duties and responsibilities in that capacity?

A As a marine surveyor I act for owners, underwriters, etcetera, in surveying ships and shore-side structures for damage, for towage, for insurance purposes, for evaluations.

I also do, as part of that work, and a rather important part of it, a damage analysis in which case I, I suppose, act, you might say, as a mechanical detective looking at either evidence of damage of one season in a shipyard or examining papers and records and analyzing how and why the damage occurred.

I also do analytical naval architecture, analyzing stresses in ships and stability in ships.

Q Mr. Ganly, by whom are you employed directly?

A Ganly-Briggs, Inc.

Q Are you an officer of that corporation?

A Yes, sir.

Q What officer are you?

A I own the company.

Q Would you please state your formal education?

A Bachelor of Science degree in naval architecture

and marine engineering from Webb Institute in 1936.

Q For the record, would you describe your subsequent employment in the marine industry after your graduation from Webb?

A I worked a short time at the Federal Shipyard in Kearny, New Jersey. But beginning in January of 1937 and continuing to the present, I have been a marine surveyor.

Firstly, I was with the United States Salvage Association in their European offices, and during the war in the U. S. Navy as an officer and still as a surveyor, and after the war I went back with U. S. Salvage and spent ten years from 1949 to 1959 in the London office being principal surveyor for the European area, and I came back to New York in 1959 as principal in New York.

In 1960, the end of 1960, I resigned and started my own business.

Q Are you a member of any professional societies?

A Yes, I am.

Q Would you state them briefly, Mr. Ganly?

A Well, I am a fellow of the Institute of Marine Engineers in London, and a member of the Society of Naval Architects and Marine Engineers here in New York, technical member of the Marine Boat and Yacht Council and a member

of the American Arbitration Association.

Q During the course of your employment as a surveyor and marine consultant have you had occasion to see and become familiar with the rudder and rudder assembly of T-2 type vessels?

A Yes, I have.

Q Mr. Ganly, I would like to draw your attention to this sketch which is being marked as Plaintiff's Exhibit 14 for identification and I would first ask you whether you have reviewed the T-2 contra-guide rudder drawing which is being marked as People's Exhibit 10 in evidence and the stern frame drawing which is being marked as Defendant's Exhibit E in evidence?

A Yes, I have.

Q Based upon your review of those two documents and upon your experience as a marine surveyor, engineer and consultant, can you identify for us Plaintiff's Exhibit 14 for identification?

A Yes. That is a diagrammatic representation of the propeller aperture, the stern frame, and the rudder, and a portion of the upper stock and the two pintles of the rudder and stern area.

THE COURT: Starting from the top, what is the yellow part?

THE WITNESS: That's the lower portion of what we term the upper rudder stock.

BY THE COURT:

Q All right. There is a dark red area just below the yellow part; what is that?

A Pardon me, your Honor?

MR. WEBBER: Your Honor, would it help--

A (continued) Do you mean this or that?

Q No, the dark red. That's the pintle; isn't it?

A Yes, sir.

Q And the light red, the thing marked with the red lines is what?

A This is the whole of the stern frame. the lower portion being termed the skeg area.

Q All right. Down at the bottom in the skeg area you will find another dark red thing which is also a pintle; is that correct?

A Yes, sir, it is.

Q And the area outlined in green, what is that?

A That is the rudder.

Q Now, when you said--I believe you referred to it as the propeller aperature, what you were talking about is that portion of the schematic there which sticks out toward the rudder; is that correct?

A Not entirely, your Honor. The aperature is that area, the empty area between the forward edge of the rudder and the aft part of the stern frame. It is this area in here that is occupied by the propeller, which is not shown here.

THE COURT: All right.

MR. WEBBER: Your Honor, could I ask Mr. Ganly to just sketch this roughly, the propeller in this exhibit, and I think it would clarify it?

THE COURT: I don't think it is necessary. I really don't.

MR. WEBBER: All right, your Honor.

BY MR. WEBBER:

Q Mr. Ganly, from your review of Exhibit 10 in evidence, can you determine the approximate height of the rudder?

A Yes. The dimensions I have given on that plan.

Q Mr. Ganly, I show you Plaintiff's Exhibit 10 and I would ask you to state for the record the height of the T-2 rudder.

A The height of the rudder is given on the plan as 21 feet 10 and 1/4 inches, and it is shown--I was going to identify the place where it is shown, your Honor. It is in the area along the bottom of the plan from just between

D--near the letter D. It is this vertical line which may be identified that way.

THE COURT: All right.

Q And Mr. Ganly, from this same exhibit, can you tell the width , fore and aft, of the T-2 rudder?

A Yes. It is given as the sum of two dimensions. The draftsman didn't show the overall so one would have to add 7 feet 9 inches and 2 feet 9 inches which would be 10 feet 6 inches.

Q Now Mr. Ganly, could I just ask you to fill in those two dimensions on this sketch?

THE COURT: Which is Exhibit 14.

MR. WEBBER: This is being marked as Plaintiff's Exhibit 14 for identification.

A (The witness marked.)

MR. WEBBER: Your Honor, with that explanation by Mr. Ganly, I would like to offer Plaintiff's Exhibit 14 for identification in evidence.

THE COURT: Do you object, Mr. Smith?

MR. SMITH: I have no objection.

(Plaintiff's Exhibit 14 for identification was received in evidence.)

Q Mr. Ganly, you have before you Plaintiff's Exhibit 10 in evidence. I should now like to read to you a portion

of the testimony of Herman Berke which appears beginning at page 135 of the trial transcript, line 4.

"Q Mr. Berke, do you have any records which would show exactly where this four feet of fractured weld was located on the rudder?

"A No, sir.

"Q So you do not know whether it was precisely over the inspection plates or in the area of the chamber in which the lower pintle nut was located; is that correct?

"A It is all common.

"Q Pardon me?

"A The entire general area is common.

"Q Well, Mr. Berke, I would draw your attention to this drawing which is being marked as Plaintiff's Exhibit 10 in evidence and I would ask you to be quite certain as to that conclusion.

"A It has an upper and lower casting and most likely both chambers would be common, pretty close to common."

Mr. Ganly, by referring to Plaintiff's Exhibit 10, I would ask whether in your opinion Mr. Berke's conclusion as to the commonalty of those spaces is a correct conclusion?

A Well, beginning at the forward end of the rudder,

the lower portions in the chamber where that lower pintle is shown, and that chamber is outlined in green, it is apparent that that is not common with the rest of the rudder, and it has its own drain plug hole. There it is down there, your Honor.

Q Assuming that the spacees are not common, Mr. Ganly, would an air-test of the rudder, in your opinion, prove the tightness of the space in which the lower pintle nut is located?

A Well, an air-test on the rest of the rudder wouldn't tell you anything about the air-tightness of that particular chamber.

To complete the answer to the other question, the rest of the rudder does appear to be common, except for that one chamber.

Q Mr. Ganly, I would now ask whether you have read and examined the following documents:

The Pillate & Sweeney report number 1352, dated June 4, 1964 which is being marked in evidence as Defendant's Exhibit M;

The American Bureau of Shipping reports NN-5451 and NN-5452, dated April 4, 1964 which have been marked as Plaintiff's Exhibits 5 and 6;

The American Bureau of Shipping report number

SH-6881, dated March 25, 1965 which has been marked as Defendant's Exhibit G in evidence;

The Jacksonville Shipyard's invoice for job number V-2494, dated March 26, 1965 which has been marked as Plaintiff's Exhibit 8 in evidence;

The Pillatt & Sweeney report number 1465, dated May 3, 1965 which has been marked as Plaintiff's Exhibit 7 in evidence;

And the deck log of the S. S. Colombia for the dates August 2 to 3, 1966 which have been marked as Defendant's Exhibit C-1 in evidence;

And the testimony of the master of the S. S. Colombia in this action;

And the Ritchie & Bisset survey report made at Singapore which has been marked in evidence as Defendant's Exhibit C?

A Yes, I have.

Q I would also add to that question, Mr. Ganly, whether you have reviewed Defendant's Exhibit R, which is the American Bureau of Shipping survey made at Singapore after the casualty?

A Yes, I have.

Q Now, Mr. Ganly, assume, if you will, that (a) the S. S. Colombia was built at Portland, Oregon, in 1945

as a T-2 tanker and was converted to a bulk carrier in 1962 by the insertion of a new mid-body so that she was about 575 feet overall and approximately 74 to 75 foot beam;

(b) That the S.S. Colombia loaded approximately 20,000 metric tons of fertilizer at Safi, Morocco during the period in April 1966;

(c) That the sailing draft of the ship from Safi was approximately 31 feet mean and 31 feet forward and aft;

(d) That the vessel experienced the weather and sea conditions described in the log book entries you have examined as well as in the Master's testimony;

(e) That the vessel lost her rudder on the afternoon of August 3, 1966 in the Indian Ocean while about 500 miles east of Aden;

(f) That the rudder was found in Singapore to have been fractured about two inches below the upper palm, the upper pintle still in place with the threads partly stripped and the nuts missing, the lower pintle and pintle nut missing, and the skeg relatively undamaged;

Based upon your review of the survey reports and the other documents you have read, and upon the foregoing assumptions, have you formed an opinion as to whether or not you would expect the Colombia's rudder to be lost

in consequence of the wind and sea conditions actually encountered?

A Yes, I have.

Q What is that opinion?

A My opinion is that those wind and sea conditions ought not to have damaged a rudder which was properly secured on that T-2.

Q Mr. Ganly, if the rudder pintles were in good condition at the time, and heavy weather was actually to cause a T-2 type vessel contra-guide rudder to break, in your opinion, what form would the damage take?

A The breakage would take place at the weakest part of the rudder which would be at the contra-guide section in the middle of the rudder. The lower portion would then be lost and after that the upper portion would go, or, in one case that I know of, the upper portion came into port with the ship.

Q Now Mr. Ganly, if you would, for the record, would you, by referring to Plaintiff's Exhibit 10 in evidence, show, using this red marking pencil, the area that you refer to when you say the "contra-guide portions of the rudder"?

A The best place to show is on the section labeled KK, and it shows a longitudinal view of the rudder, and this is what I mean by the contra-guide, where the offset

appears between the upper part of the rudder and the lower part.

The rudder, as you look at it, looks like a flat plate but it is not . The upper portion goes off one way and the bottom portion goes the other way.

Q Mr. Ganly, again referring to Plaintiff's Exhibit 10 in evidence, which is now before you, to wit, the drawing of the T-2 contra-guide rudder, would that describe the locking device set forth in that drawing for the pintle nuts?

A The pintle nuts and pintle detail is shown on the-- towards the left-hand side of the drawing, but there is no identification mark in the margin.

THE COURT: Well, on the bottom pintle nut isn't there a green circle?

THE WITNESS: Yes, sir, there is a green circle already marked on the pintle section; yes, sir.

That section shows that on top of the nut, and running through the pintle itself, is a pin, and to the left there is a detailed drawing of the pin itself, and that hole is identified as being a 9/17 inch diameter hole for a 1/2 inch diameter split pin.

Q Now Mr. Ganly, in laymen's parlance, is it proper to say that a split pin is similar to a cotter pin?

A Yes. It is a cotter pin except that it is slightly larger. When they get that size we call them that.

Q When it is installed, what is done to the split pin?

A The end of the split pin is bent or one-half of it being bent one way and the other half being bent the other way.

Q From Plaintiff's Exhibit 10 in evidence, can you determine the material from which the split pin is to be fabricated?

A (No response.)

Q And I would perhaps draw your attention to--

A Let me look at the parts list. It is part number 78. It is brass, and its length is 5 1/2 inches.

Q Mr. Ganly, I show you two photographs which form a part of Defendant's Exhibit F in evidence and I ask you whether you can see any split pins in those photographs?

And I specifically would ask you about the first and second photographs in the exhibit.

A In the first photograph, in the upper row of three nuts and bolts, one can see a split pin on the middle bolt and also on the right-hand bolt. There's the edge and there's the edge.

On the lower bolts it doesn't clearly show.

On the second photograph one can see--I see no split pins there on the second photograph. No. They show there in that one.

MR. WEBBER: Your Honor, that was more for the purpose of illustration to show what they looked like.

Q Now Mr. Ganly, again by referring to the exhibit before you, which is Exhibit 10, can you determine whether the split pins in the palm holes are the same material and dimensions as the pintle pins, pintle split pins, I should say?

A Yes, they are. In the same place on the drawing but directly above and at the top, the topmost drawing has a detail of the palm looking down upon it, and it there says among other things, "1/2 inch split pin. See detail of bolt; parts 78, 85 and 86."

And part 78 is the split pin, exactly the same as we noted before.

Q Mr. Ganly, I believe that you have before you the Pillatt & Sweeney report number 1465 dated May 30, which is Plaintiff's Exhibit 7 in evidence, and also Plaintiff's Exhibit 8 in evidence, which is the Jacksonville Shipyard's invoice, and I refer you more particularly to item number 31 in the Jacksonville Shipyard's invoice.

Based upon your review of those two documents,

and upon your experience as a marine surveyor, engineer and consultant, have you formed an opinion as to the propriety of the 1965 repairs to the lower pintle and pintle nut as opposed to the locking device?

A Yes, I have.

Q And what is that opinion?

A My opinion is that when the repair was done, there should have been a new nut, and the original pin should have been put back in. If they wanted to put in an additional locking device, that would have been fine.

Q Mr. Ganly, should any further repairs or examinations of the pintle proper have been made, in your opinion?

A Yes. I see here that there were deteriorated threads and also--

THE COURT: When you say you " see here," what are you referring to?

THE WITNESS: I see in item 31 of Exhibit 8, and also item 31 of Exhibit 7, that the nut had backed off and the threads had to be machined.

Exhibit 8 is more specific and says the threads were deteriorated.

Because of that, I would have had that pintle pin examined by magniflux to determine whether any cor-

rosion fatigue factors had begun.

Q Mr. Ganly, I refer you again to Plaintiff's Exhibit 7 and Plaintiff's Exhibit 8, which are now before you, and I ask whether, based upon the two documents and upon your experience as a marine surveyor and engineer and consultant, you have formed an opinion as to the propriety of a horseshoe keeper bar over the pintle nut as opposed to the use of a bronze split pin or a brass split pin specified in the T-2 rudder drawing which has been marked as Exhibit 10 in evidence?

A Yes, I have.

Q What is that opinion, Mr. Ganly?

A I think the brass pin is superior.

Q Would you tell us why you feel that way?

A I feel that way because the locking bar has to be welded across the nut, the pintle pin, and then to the rudder casting, and the welding is susceptible to two things: one, deterioration due to galvanic action and corrosion, and secondly, to fatigue fracturing which would release the pin from the nut.

Q Is the split pin subject to galvanic action on welding?

A No, it is not.

Q Is it subject to fatigue fracturing of the type you described?

A Not in the type I described because it would not be suffering that kind of stress.

Q Mr. Ganly, I refer you to Exhibit 12 in evidence, and I would like to read you a further portion of the testimony of Mr. Herman Berke which begins at page 139 of the trial transcript at line 15.

"Q Mr. Berke, using the same green pencil you used in respect to People's Exhibit 11, would you show on this schematic drawing the position of the nut and the horseshoe keeper bar after the completion of the 1965 repairs?

"MR. SMITH: If you can do it, Mr. Berke.

"THE COURT: Of course, if he can.

"A Well, I think there is a washer under here (drawing) and that would be just to the top of it, and the keeper would be like there, and it would be welded to keep this here nut welded here and welded here and welded to some other fixed arangement to keep the nut from backing off."

Based upon your examination of Exhibit 12, and your reading of the testimony of Mr. Berke which I have just quoted, have you formed an opinion as to whether the repairs depicted in Exhibit 12 and testified to My Mr. Berke was proper?

A Yes, I have.

Q And what is that opinion?

A It was improper. There is a serious omission here.

Q Would you describe that omission for us, Mr. Ganly?

A There is no connection between the nut and the pintle, so that they are free to rotate one with relation to the other. So in effect, there is no keeper at all. The nut is merely secured to the rudder framing, but never to the pintle itself.

Q Now I refer you again to the Pillatt & Sweeney report number 1465, to the item 31 of the Jacksonville Shipyard's invoice, and to the drawing which has been received in evidence as Plaintiff's Exhibit 10, to wit, the drawing of the T-2 contra-guide rudder.

Based upon your examination of the foregoing documents, and upon your experience as a marine surveyor, engineer and consultant, have you formed an opinion as to the propriety of a keeper bar on the underside of the skeg as opposed to the singular keeper plate specified in Exhibit 10 and secured in accordance with that Exhibit?

A Yes, I have.

Q What is that opinion?

A The keeper plate is far superior to a bar.

Q Why is that, Mr. Ganly?

A Because, again, the susceptibility of the welding on the bar to galvanic action and corrosion and also to a fatigue fracture due to the vibration and hammering that the skeg inevitably gets from the rudder.

In addition, this keeper plate as testified in in Exhibit 10 has a ring of bolts, or, I should say screws. They are 3/4 inch hexagonal head tap bolts, and there are 12 of them.

Then, this plate is tacked in six places. So therefore, the plate, in my view, is far superior to any bar that you could put across it.

Q What is the total length of the tack-welding on the copper plate as specified in the drawing, Mr. Ganly?

A Six inches. There are six one inch tack bolts.

Q Mr. Ganly, based upon the reports that you have read and examined relating to the 1964 and 1965 dry dockings of the S. S. Colombia, the conditions found at the 1964 and '65 dry dockings with respect to the rudder and rudder fittings, the repairs conducted at those dry dockings, the deck log of the Colombia for August 1 to 3, 1966, the testimony you have reviewed, and also the Pillatt & Sweeney, the Ritchie & Bisset survey report at Singapore, and upon your own experience as a marine engineer,

surveyor and consultant, have you formed an opinion as to the cause of the loss of the Colombia's rudder on August 3, 1966?

A Yes, I have.

Q Mr. Ganly, may I ask you to explain your opinion, perhaps with reference to Plaintiff's Exhibit 14 in evidence?

A I believe that this bottom pintle dropped out like that leaving the rudder supported only from up here as a cantilever. There is a steady bushing up here. And these two bearings then are trying to carry the load for which they were never designed, and that's why there is a fracture that took place here across the area of what would then become the area of greatest stress. Whereas previously, with this pintle in place and the rudder supported both top and bottom, the area where the greatest stress is is across the contra-guide where the section changes.

Furthermore, the Ritchie & Bisset report states, and so does the American Bureau report from Singapore, that this bolt gudgeon was rebushed to suit the new rudder and the bushing was machined. There was no wrong done to the bottom skeg itself, and my experience has been, from a casualty that I sustained, when the rudder parts go in the middle with this pintle still in place, the gudgeon hole is actually pounded before the rudder leaves the ship.

Q Mr. Ganly, if I may ask you one further question, in your opinion, what could have caused the pintle to drop out?

A The locking device shown in Exhibit 12 didn't stop the pintle from turning inside the nut, and there is no reason then why the pintle couldn't keep turning down and with the single bar to take the weight and the pounding, the bar would go and away would go the pintle.

MR. WEBBER: I have no further questions, your Honor.

MR. SMITH: Your Honor, I would like five minutes with Mr. Sweeney before I conduct my cross-examination.

THE COURT: Yes. The area is somewhat technical. I think you ought to have such an opportunity.

Do you want to do it over lunch and come back?

MR. SMITH: I think that might be helpful if we did it that way.

THE COURT: All right. Why don't we resume then at ten minutes before two?

There are other witnesses today, are there?

MR. WEBBER: Your Honor, we would like to speak with Mr. Forgus our metallurgist during the break but I don't anticipate that we will be putting him on the stand.

THE COURT: Well, if you want to I'll be here to listen to him.

MR. WEBBER: Thank you, your Honor.

THE COURT: Ten minutes to two.

(Recess to 1:50 p.m.)

AFTERNOON SESSION

1:50 p.m.

EDWARD FREDERICK GANLY, resumed.

BY THE COURT:

Q I have one problem. Sir, have you ever seen Defendant's Exhibit P before?

A No, sir.

Should I look at it, your Honor?

THE COURT: Sure. All right, Mr. Smith.

CROSS-EXAMINATION

BY MR. SMITH:

Q You graduated from Webb Institute in 1937; is that correct?

A No, 1936.

Q Where were you employed from 1936 until the time that you were employed by the United States Salvage Association?

A I worked in the outside machinery department at Federal Ship Building and Dry Dock Company, Kearny, New

Jersey.

Q What does that mean, "the outside machinery department"?

A That department takes care of the installation of the machinery in the ships on the ways and follows them through the outfitting, the trial trip to delivery.

Q Were you working as a naval architect at that point?

A No, no. That was in the engineering department. That was in marine engineering.

Q What was your job classification at that time?

A I don't remember if I even had one, really. I don't know.

Q You were in a rather junior capacity having just graduated from Webb; is that correct?

A That is right.

Q You had no supervisory responsibility at that time.

A That's true.

Q Then you joined U.S. Salvage Association?

A Yes.

Q And you represented various marine underwriters; is that correct?

A That is correct.

Q During that period of time that you were employed prior to World War II were you a surveyor or a principal surveyor?

A I was a surveyor.

Q Where were you stationed?

A In the London office of U. S. Salvage.

Q During that period of time did you attend any vessels that had rudder casualties, if you can recall?

A A quick answer is I can't recall. You are speaking now of the period 1937 to 1940?

Q Right; that is correct.

A I don't recall any particular one. There may have been.

Q But you don't recall any?

A No.

Q Do you recall any examinations that you made on dry dock in that period of time with respect to rudders or pintles?

A No. The answer would be the same.

Q You have no recollection.

A I don't recall.

Q You don't have any recollection of that?

A No.

Q But at that time you weren't representing owners,

were you?

A That is true.

Q You weren't an owner's representative, you had no responsibility for the seaworthiness of the vessel; is that correct?

A That's not quite correct.

Q Well, with respect to the owner's responisbility. I am not talking about any responsibility you may have had to someone else to see whether the ship was seaworthy or not. I'm talking about the owner's responsibility to make a ship seaworthy.

A That's right. I had none.

Q Your job on occasion was to inspect the vessel and report to the underwriter as to whether or not it was seaworthy for a particular tow; is that correct?

A Sometimes for a tow and sometimes for insurance purposes on the American Hull Form.

Q Before the underwriter would write the insurance; is that correct?

A I presume so. I have got to answer that way. I don't know what the underwriter does.

Q Now, going to your navy service, what was your job in the navy?

A I was a surveyor representing the United States

Government, principally the navy.

Q Where were you stationed?

A In New York City.

Q What type of surveys did you conduct for the government?

A Whatever was required. It was principally collision work and a great deal of damages claimed against the navy from combat areas, and although the surveys were held, the claims were wiped out by the "knock for knock" agreement after awhile.

THE COURT: Is that going to become an issue in this case? I don't even know what it is. What is a "knock for a knock" agreement?

MR. SMITH: That was an agreement somewhere along the way that knocked out all these claims against the government. It is so far in the past now that I'm not sure that it has any significance at all. Not in this case at least.

THE COURT: Good.

Q During that time that you were in the navy did you have occasion to survey any damages to rudders?

A One I remember particularly. I may have surveyed more than one but one stands out.

Q What was the occasion that you had while you were

in the navy?

A That was the Norwegian tanker that was alleging damage by collision but I was able to prove that it came from a grounding rather than a collision.

Q Just what were the damages that the vessel had? Was the rudder lost?

A No. The rudder was bent upwards in an "S" shape. It was a rudder far different from the one that we are dealing with here.

Q It didn't have a lower pintle?

A Yes, it did but it was a plate rudder on cast arms. It was not a hollow rudder with diaphragms in it.

Q Now, were there any other occasions that you had to look at rudders on vessels for the navy?

A I don't recall any particular ones. I say that one stands out.

Q You don't recall any others?

A No. That one had a big argument attached to it so I remember it.

Q For the period of time that you were with the Salvage Association, the U. S. Salvage Association, after World War II, how long were you a surveyor before you became a principal surveyor?

A From 1946 until 1953.

Q During that period of time did you have occasion to represent any owners with respect to the seaworthiness of a vessel?

A No, I didn't.

Pardon me, pardon me. I spoke too quickly.

Yes, I did, in 1950.

Q What was that occasion?

A That was the occasion of the conversion of the cruise liner Nassau. She was originally a New Zealand shipping company's Rimutaka, and in that case, by arrangement with U.S. Salvage, I was engaged to write the conversion inspection and to supervise the work.

Q Did that involve the rudder itself?

A We put the ship through survey. She had been out of class for almost 30 years, and the rudder, of course, was lifted and replaced.

Q It is rather unusual to lift a rudder, isn't it?

A Yes, it is.

Q Do you recall a specific occasion when you were a surveyor after World War II and before you became a principal surveyor where you inspected a rudder casualty?

A There were many, so many really that I can't recall them ship by ship.

Q In what capacity were you functioning when you

looked at them?

A I was a surveyor representing underwriters.

Q As a surveyor representing underwriters you had no say in how the repairs were going to be made; is that correct?

A That is not correct.

Q All right, what say did you have?

A The repairs had to meet my approval. Otherwise I would not issue what is called a "clean report."

Q Well, when you say your "approval," do you mean that the repairs had to be in line with the allegation that was made for the damage?

A No. I'm speaking of the sufficiency of the repair. Sometimes an owner would like to cut corners, perhaps, but that doesn't usually happen if the owner feels he has a claim which is going to be paid by underwriters. But the surveyor's obligation and responsibility is there nevertheless. He has to decide on his own and not depend upon the Coast Guard or the Bureau, whether these repairs are satisfactory because this vessel is going to continue to be at the risk of the underwriters.

Q All right. Now, you brought up a point there.

The repairs in 1964 were done as the result of a casualty at which time there was a U.S. Salvage Association

surveyor present. Would he have made an inspection also on the Colombia's rudder?

A Yes, he would have.

Q After you became principal surveyor, how many surveys did you attend on vessels for rudder damage?

A Again, I can't recall. I did quite a lot of travel in Europe, and I attended almost all of the large surveys, the large casualties.

One rudder damage I recall particularly, involving a tanker from the Persian Gulf that was finally dry docked in Palermo.

Q Was that a T-2?

A No, sir, she was larger.

Q Was it an American flagship?

A Yes, she was.

Q Do you recall the name of it?

A I can recall the company. It was either Bulk Fuel or Bulk Petrol.

Q What kind of a casualty did she have?

A She backed away from the dock into an island and wiped off the skeg and the rudder.

Q In your experience is that a common occurence with skegs, that they back on to them and damage them?

A I wouldn't say common, but it probably is as good

a way as any to damage a skeg.

Q Would that cause distortion of the skeg?

A It sometimes causes distortion but usually because a skeg is so heavy and such a cast piece it results in fractures, I think.

Q What would happen if the vessel had some distortion in the skeg and continued to operate in heavy weather?

A The first evidence of damage would be found in the pintle bushings and the pintle sleeves themselves, I think. It might also be evidence of it, depending upon the severity of the misalignment, in the operation of the steering geer and the carrier bearing.

Q And it could ultimately result in the loss of a rudder pintle; is that correct?

A Well, the word there is "could." Of course, I cannot say it couldn't happen but I wouldn't expect it to happen.

Q How many T-2 tanker rudders did you inspect in all of your career up to 1960?

A That's very difficult to say, very difficult. Actually, I can't tell you how many.

Q Do you how many T-2 rudders you inspected?

A That I can't say either.

Q Do you know how many you inspected had casualties to them?

A Yes. I have only inspected one that had a casualty and I know of two others.

Q Now, since 1960 you have been an independent surveyor and consultant; is that correct?

A That's right.

Q What percentage of the time in the last five years have you spent representing steamship owners as the owner's representative on the dry dock?

A I can't say. Every year I have to make up this percentage of the kind of business we have for the government report, but that's not a part of it that I have to do. It is difficult to say.

Q Would you spend as much as 25 percent of your time representing ship owners on the dry dock where you are the owner's representative responsible for the repairs?

A I would say 25 percent is a minimum. It would vary year to year but I should think so. I would rather say less than more.

Q Now, what period of time did you spend working for the owners in the detective work that you mentioned on dry docks?

A That would be about the same, 25 to 30 percent,

something of that sort.

Q In the last few years, Mr. Ganly, what percentage of time have you spent working as a marine detective?

A The same. About the same. It doesn't vary a great deal. As the work goes up, the percentages seem about the same.

THE WITNESS: Your Honor, if this precise explanation is important, I can refer to the last report I made to the government and bring it in.

MR. SMITH: No, that won't be necessary. I just wanted an approximation.

Q How many ship owners have you represented on the dry dock since 1960 where you were responsible for advice on repairs?

A How many ships?

Q Yes, how many ships.

A There again it is hard to say. Since 1960 our case numbers are well over 4,000, so if 30 percent of those are ship owners, well then you have the number.

Q To your knowledge, how many ships have you personally, not case numbers, but you personally, represented at dry dockings since 1960?

A I can't say. I don't know.

Q Would it be a hundred?

A Oh, it must be more than a hundred, certainly. Certainly, 1960 is 14 years.

Q I'm talking about this one specific situation where an owner calls you in to supervise his repairs and make the ship seaworthy.

A Yes. Now you said "supervise"?

Q Yes.

A No, that's different. I represent an owner and I write specifications, and I agree on prices far more times than I actually supervise repairs.

Q I see. That's done by somebody else then?

A Yes, it is. That's a part of the business I don't care too much for. I used to do some of it. My office did some of it but I have dropped away from it.

Q So that actually, you don't go down and watch them do the repairs, that's done by the supervisor, whoever that might be?

A That's not entirely correct because although the owner may have his own superintending engineer, I do oversee some of the repairs because some of these problems have to be correctly done and I'm interested, myself, that the work is properly done, although I don't take the responsibility of full supervision.

Q How many times have you been personally responsible

for the full supervision of dry docking since 1960?

A Not very many but I don't really know.

Q Now, is the split pin that was referred to on direct examination in the drawing, Plaintiff's Exhibit 10, the only locking device that's used on rudder pintles?

A That's the only one that's shown on that plan.

Q That's not my question, Mr. Ganly.

Is that the only one that's used in the shipping business?

A No, it is not.

Q How many different types are there?

A That I couldn't say. It depends on a man's imagination. It can be done a number of ways.

Q Is the horseshoe type which was described by Mr. Berke in his testimony a device which is approved by the Coast Guard and the ABS?

A I must answer that with a presumption. I presume they are. It is.

Q You don't know?

A No. I presume it is. I would say that its approval would depend upon the installation.

Q In other words, if it is installed properly, the Coast Guard, the ABS would approve?

A Yes, but their idea of proper may be different

from mine. I would never approve it if the horseshoe were welded to the rudder frame as well as to the pintle and the nut because I think it is important to isolate the horseshoe from the shocks experienced by the rudder and the pintle, as the pintle works in the bottom gudgeon.

Q So you have an idea for a different design; is that correct?

A No, I don't.

Q What is the difference in the design then?

A Well, Exhibit 12 shows that this horseshoe was welded to the rudder casting.

Q Do you know that that drawing shows that? Is there anything on the drawing that shows that it was welded in that manner?

A Yes. These too lines that Mr. Berke testified to, this is welding, as he said "Welding here and here and here," those four places.

Q Were you here when Mr. Berke testified?

A No, sir, I was not.

Q Did you hear his testimony?

A I heard it read.

Q All right, I will read it to you again.

"Q Mr. Berke, using the same green pencil you used in respect to Plaintiff's Exhibit 11, would you show on this

schematic drawing the position of the nut and the horse-shoe keeper bar after the completion of the 1965 repairs?

"A Well, I think there is a washer under here (drawing) and that would be just to top it and the keeper would be like this, and it would be welded to keep this here nut; welded here and welded here, and welded to some other fixed arrangement to keep the nut from backing off."

Now, can you tell from that description where it is welded?

A The description alone, no, but I think the description and this--my interpretation is--that's what I have to say--my interpretation is that these little green lines mean welding.

Q So how many green lines and how many places do we have that you think Mr. Berke referred to as welding on that drawing?

A Four.

Q And they are on the keeper the nut, the pintle and the--

A No, sir. Not on the pintle.

Q Not on the pintle?

A No, sir.

Q The keeper the nut and the stern frame; is that correct?

A No, sir.

Q What is the other part?

A The keeper, the nut, the nut, the keeper.

Q So you have two places on the nut?

A Yes, sir.

Q And between the keeper and what other part of the ship is it welded?

A Between the keeper and the rudder.

Q Between the keeper and the rudder?

A The rudder casting, and that's the part that I would object to.

Q And that's what you interpret Mr. Berke as having testified to; is that correct?

A Yes, sir.

Q Have you observed locking devices such as that one on other vessels?

A This horseshoe device?

Q Yes.

A No, I haven't actually seen it.

Q You have never seen it?

A No, sir.

Q Have you ever seen any other type of a device other than a split pin?

A Yes, sir. I have seen a bar across and a groove,

and I have seen welding itself used from the pintle to the nut.

Q Without a bar?

A That's right, sir.

Q Now, what type of a drawing is Plaintiff's Exhibit 10 which was the drawing of the rudder?

A That's a construction drawing.

Q Is that also called a detailed drawing?

A Yes. Well, that's the same thing.

Q And the detailed drawings are made by the yard, generally, aren't they, from a design plan? Is that correct?

A Generally so, although not necessarily so, but generally so.

Q And these detail plans vary from yard to yard; is that correct?

A They do.

Q So that if you have a different naval architect in, say, Todd's Yard, you may have a little different design on the detail; is that correct?

A That's correct.

Q That's something that's left to the detail department of a ship yard to design; is that correct?

A Yes, it is.

Q Do you know where the Colombia was built?

A I am recalling if I looked it up. I'm not sure where it was built but it may have been Sun.

Q It may have been Sun?

A It says Sun right on the drawing here.

Q Was that represented to you as being a drawing for the Colombia?

A Yes, I took it to be.

Q Well, would you be surprised to learn that the ship was not built at Sun?

A No. As I say, I thought it was.

Q The fact is, the ship was built on the west coast in Portland by Kaiser.

A (No response.)

THE COURT: Is that a fact?

MR. SMITH: Yes, it is in the record, your Honor. I think we stipulated to it.

THE COURT: If it's been stipulated to, fine.

MR. WEBBER: Your Honor, in view of the line of questioning, may I ask Mr. Smith to produce the drawings of the rudder of the Colombia? They are presumably in the possession of the owners or on board the vessel at this time.

I had previously made a request for them and

and Mr. Smith advised me that such drawings are not in the possession of the owner and are not on board the ship.

MR. SMITH: I will make that representation to the court again and I will ask Mr. Ganly a few more questions about it.

Q Mr. Ganly, a T-2 was a war-built ship; is that correct?

A Yes, it was.

Q And there were something between 500 and 1,000 built during the war years; is that correct?

A Not quite so many but it doesn't matter. There were hundreds built.

Q And they were built all over the United States in different yards?

A No, not quite. They were not built so widely as the Liberty ships. They were built in three or four yards--something like that.

Q Now, each ship that was built didn't have its own designer, did it?

A (No response.)

Q There was one design used; is that correct?

A No. There was a principal designer chosen, such as Gibson Cox, or Drake or someone like that, who got out extra drawings and was sort of the headquarters

for all drawings having to do with the ship. But I believe many of the shipyards sub-contracted their own detail drawings and some of them, as I see here, Sun may have done their own. Certainly they are not sister ships in all the details.

Q So that the locking devices may not be the same locking devices that were designed at Kaiser, is that correct?

A That's probably true.

Q Have you ever found a split pin missing from a rudder pintle?

A No, I have not; I don't recall any.

Q Have you ever found a split pin missing from any other type of pin or pintle where a split pin is used?

A Yes. Split pins occasionally back out; yes.

Q And it could happen to a pintle on a rudder too; couldn't it?

A It could.

Q You used an expression with respect to the heavy weather and I think I am quoting it rather precisely, "ought not to have done the damage" when you referred to the heavy weather; is that correct?

A That's right.

Q Do you rule out entirely any possibility of loss

of the rudder being the result of heavy weather or some other outside force?

A No. You are speaking specifically or is that a general question? I didn't get the beginning of it.

MR. LOESBERG: In this case.

A Yes, I do. Yes, I have a different opinion as to how this rudder was lost and it was not heavy weather.

Q How about outside force?

A No, that would not be true either. There had to be, in my view, a sequence of events which began with the loss of the bottom pintle.

Q Let's go on a little bit more then.

Would your opinions in any way change if the skeg had been found to be distorted after this casuality?

A I would like to know how much distortion there was. There is none in the survey reports.

Q Let's just get back to the question now and we will go to the degree in a minute.

If there were distortion, would it change your opinion?

A I'd say it might. It depends on what the distortion is.

Q So, depending upon the amount of distortion, there is a possibility that it could be some other cause

other than the one that you have espoused here today; is that correct?

A Yes, that's right. That's right. And when I say "distortion" now I mean distortion of the gudgeon itself; not a distortion of the stern frame.

Q A misalignment, is that what you are talking about?

A No. I'm talking about a local distortion of the round gudgeon hole.

Q Well, wouldn't you have that distortion if you had a distortion of the skeg?

A Not necessarily, no. The hole would be worn in one direction. I'm talking about a hammering, a physical striking of the Micarta and a damage to the metal of the skeg itself.

Q Now, you previously testified to an occasion where a ship did in fact back into something and the skeg was damaged; is that correct?

A Yes, sir.

Q And that was one that you did examine, and it was damage to the rudder.

A There was no rudder and there was no skeg.

Q It was all taken off?

A That's right.

MR. LOESBERG: Your Honor, I'm not trying to interrupt Mr. Smith's cross-examination.

MR. SMITH: Well, you are.

MR. LOESBERG: The gentleman admonished me for saying the same thing a week ago.

It is my understanding that the complaint, etcetera, is that this rudder was lost by a peril, and this has been Smith's line of attack and has been his evidence, and now we let him go pretty far when his own survey reports, which we agreed to, which said the skeg, etcetera was not damaged, and I don't know by his line of questioning if he has a new defense?

THE COURT: I don't think so. Go ahead, Mr. Smith.

MR. SMITH: Your Honor, I point out to the court at this time that my burden of proof is to show that the owner exercised due diligence to make this vessel seaworthy, not to prove that the vessel was in fact seaworthy.

THE COURT: Go ahead.

MR. SMITH: Or the cause of the casualty.

THE COURT: All right. By the way, Mr. Smith, my silence should not be taken as complete agreement with your statement.

BY MR. SMITH:

Q Now, referring to the welded bar on the bottom of the skeg, have you seen such a welded bar on other vessels?

A Yes.

Q Is that a common type of bottom keeper, so to speak?

A I wouldn't say it is common. It is used, yes. It is easy. That's why it is used, really.

Q And it is used on U. S. Flagships and vessels that are inspected by ABS; is that right?

A That's right.

Q So you would have to assume that they also approve it?

A That's right. It doesn't mean that I have to.

Q But your standards may be quite different than the average ship owner's; is that correct?

A No, not the average ship owner but sometimes a little different from the average American Bureau of Shipping surveyor.

Q Now, in giving your opinion, did you take into consideration the modification that was done to the skeg? Or, did you rely strictly on Plaintiff's Exhibit 10?

A I relied upon Plaintiff's Exhibit 10 and the survey report but it is only right, now, to say that after having

heard Mr. Sweeney this morning, and seeing this Exhibit P, that I would say if there is any misalignment in the skeg, the skeg is stronger now than before so I mean it re-enforces my opinion, I would think. There would not be a misalignment of the skeg because of weather.

Q Because of weather?

A Yes.

Q How about it striking a bank, or something like that?

A Well, if you want to put a proposition to me and ask me to assume something, I will answer it.

Q I am asking you that question now.

THE COURT: Assume that it hit a bank and there was a misalignment.

THE WITNESS: And that there was a misalignment? Then, there would have been, as I earlier said, an excessive wear on one side.

THE COURT: Depending upon the degree of misalignment?

THE WITNESS: That's right.

THE COURT: The misalignment, if it is bad enough, you won't have that same kind of thing but you will have the rudder drop off, right?

THE WITNESS: Well, I haven't had any. You

see, the presence of this kind of damage becomes known to those on board the ship before you lose the rudder so the ship is put into dry dock because of rudder trouble and I have surveyed ships where we had such a bad wear on the bottom gudgeon that we had to bore it out and put a steel sleeve in before we could put the bushing back in.

Q This particular skeg was re-enforced, Mr. Ganly, and in Mr. Baxter's report on page 3 it says "There was very little--"

MR. LOESBERG: Excuse me. I object. That's not in evidence. That's hearsay of somebody's report and it is self-serving unless he brings the man in.

MR. SMITH: I thought it was received in evidence.

MR. LOESBERG: It was marked for identification. The gentleman asked me to consider it but I didn't agree to it.

THE COURT: You don't agree to it?

MR. LOESBERG: No, your Honor.

THE COURT: Do you object to it?

MR. LOESBERG: So far as I am concerned, it's hearsay. The answer is I do object. I'm sorry. I'm not clear on the question but I do object as to the answer to

your question.

THE COURT: All right, rephrase your question.

MR. SMITH: Your Honor, I would like to offer this in evidence as a document made in the normal course of business. The witness is deceased and I think it should be admitted on that basis.

THE COURT: I assume that this is another survey report?

MR. LOESBERG: It is the owner's survey report that was made by Mr. Baxter in behalf of the owner.

THE COURT: Unfortunately, in view of the fact that this survey is the survey of the casualty involved, it cannot be received as a business record.

However, if you want to ask the question, you can do it if you frame it properly.

MR. SMITH: I don't think I can ask the question without having this in evidence because the question would be meaningless.

THE COURT: Not necessarily.

MR. SMITH: I have already asked the question in another way and I could ask him again in another way but I don't know whether it would serve any useful purpose.

I'll try.

Q Mr. Ganly, could distortion in the skeg cause

a failure of the rudder?

A That is so broad, the answer to the broad question must be yes. But it would take a great distortion in the skeg, I'll tell you that.

Q The bolts that are on the plate, on the bottom of the skeg, the round plate that you described before, what are they made of?

A I believe they were brass.

Q What does the specification call for?

A That's what I'm going to look at. They are brass.

Q They are subject to wear and tear also, aren't they?

A I don't think one should say they are subject to wear and tear; rather that they are subjected to the presence of sea water, but they are certainly protected being up in a recess, as you can see in this stern frame drawing.

Q How much are they recessed?

MR. LOESBERG: Will you let him finish his answer, sir?

A I was merely going to point out what we are talking about and that is a plate which goes across here, and the tap bolts are up in here so they are not down at the bottom of the skeg. Now that recess, as you can see, is

not the same as at each end. It is more at the forward end than at the aft end. I would need the stern frame drawing, I think, to get that dimension, if you want it.

Is this the stern frame drawing?

Q The exhibit you are referring to now is Defendant's Exhibit E.

A The recess isn't dimensioned on the drawing that I see here unless it is on a detail somewhere else. No, the depth of the recess is not mentioned.

Q Is that also a Sun Ship Building drawing?

A Yes, this is Sun.

Q That's also a detailed drawing; isn't it?

A Yes, sir, it is.

Q Probably prepared by Sun in their own engineering department?

A Yes, I think so. Yes.

Q With respect to the area down here where the lower pintle is, how far is that area tested?

A Well, to tell you the truth, I don't think anybody would bother to test it.

Q It is not normally done, is it?

A No, I don't think so. It would be tested by air-pressure.

Q But it is not done in the ordinary practice of--

A I wouldn't expect it to be, and I think that's why the designers designed it as a separate compartment away from the rest of the rudder.

MR. SMITH: I have no other questions.

REDIRECT EXAMINATION

BY MR. WEBBER:

Q Mr. Ganly, I would ask whether you have been employed by the firm of Burlingham, Underwood and Lord, in connection with any of your so-called part-time detective work?

A Yes, I have.

Q Have you been employed by a partner in that firm who is present in this courtroom?

A Yes, I was.

MR. SMITH: I will stipulate to that.

Q Are you working on a case of maritime detective work for the partner in question at the present time?

A Yes, I am.

Q Mr. Ganly, I refer you to the Ritchie & Bisset survey which has been marked as Defendant's Exhibit Q in evidence and I will quote a portion of the survey at page 12, and in there the surveyor says, and I quote, "As the rudder was completely missing together with the lower pintle, no definite cause of damage would be given.

However, it is the opinion of the undersigned that during heavy weather the bottom pintle could possibly have been carried away causing the rudder to shear as indicated."

Mr. Ganly, in your review of the exhibits now in this case, based upon your reading of the testimony of Messrs. Berke and Captain Meyer of the Colombia, have you formed an opinion as to the validity of the statement I have just quoted to you?

A Yes, I have.

Q What is that opinion, Mr. Ganly?

A I agree with the sequence as stated by that surveyor.

Q Do you agree with the particulars of the comment?

A That depends upon what the man means by "carried away." If he means lost, which is sometimes the interpretation of the words "carried away," then I would agree, yes; the pintle was lost. If he means that it was physically blown, then I would say the evidence doesn't support that conclusion.

Q I believe this question may have been posed by Mr. Smith, Mr. Ganly, but I think I should again ask it because I missed it:

Did the changes effected to the skeg which were depicted in Defendant's Exhibit P effect your opinion as

to the cause of the casualty in any way?

A No. The skeg was stronger after Mr. Sweeney's repair than before.

Q Now, a point I would like to clarify also, Mr. Ganly, is that on the cross-examination there was mention of rudder damage. When a rudder is damaged, is it lost in all cases?

A Not necessarily; no.

Q Furthermore, Mr. Ganly, have you seen any T-2 rudders secured by pintle arrangements other than those depicted on Plaintiff's Exhibit 14 in evidence?

A No, I don't recall that I have; with one exception, yes. One vessel that I worked on, the pin was put in but also the nut was welded around the top where the pintle came through, so we had the pin through and then we had a weld on each side of the pin.

Q And Mr. Ganly, just one point that I would like to clarify with respect to your prior testimony: I gather that it is your opinion that in order for the repair to be proper, the pintle nut must in some manner be locked to the pintle pin so as to prevent the pintle rotating in the nut; is that correct?

MR. SMITH: Objection.

THE COURT: I will sustain the objection. We

have gone through that already.

MR. WEBBER: I have no further questions.

THE COURT: Mr. Smith?

MR. SMITH: No other questions, your Honor.

THE COURT: All right, step down.

(The witness was excused.)

THE COURT: Are we going to have any more witnesses?

MR. SMITH: I would just like to have five minutes.

MR. LOESBERG: I agree. I would like to have five minutes too. Can we take a recess?

THE COURT: Sure.

(Recess.)

MR. SMITH: I will recall Mr. Sweeney.

JAMES E. SWEENEY, recalled as a witness by the defendant, having previously been sworn, testified further as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q Mr. Sweeney, you testified this morning that you had inspected a hundred or more T-2 type vessels in dry dock in your experience; is that correct?

A That is correct.

Q What percentage of those had horseshoe keeper

rather than split pins?

A I would have to clarify my statement a little more. I inspected rudders and the stern and so forth overall, not pintles as such. I examined many, many pintles but how many I wouldn't know. When I said "100 to 150" I was speaking of all dry dock examinations of stern areas, so if you limit it down to the number of just pintles, and pintle pins, and so forth, it would be considerably less than that but still many.

Q All right. How many would you say?

A Probably in the area of 50 or 75--something like that, that I have examined.

Q All right.

A You have got to remember that to examine a lower pintle pin on a T-2 you must cut away the inspection plate into that compartment and look inside that to see if everything is in order and then you must weld that plate back again, so it is not just a regular external examination where you go down the dry dock and look at it. You must get further exposure.

Q Is that plate cut out on a dry dock?

A No, the plate is not cut out on every dry dock. That lower plate, particularly looking at it as it is, when it is cut out, there is reason to believe that

something may be wrong or some owners or owner's surveyors wish to open up that plate periodically and check to see if the pintle pin nut is secure and that nothing is happening inside.

Quite often, only the pintle clearance is taken which extends down in the skeg, into the red part, and underneath there you can put feelers and find your clearance. That suffices sometimes depending on conditions.

Q Now, when you did the rudder job, you had the plates off because you had the rudder unshipped; is that correct?

A Yes, in order to remove the pintle and in order to remove the rudder.

Q If you had had the next dry docking on the Colombia, would you have removed the plates on that dry docking?

A It is my practice, due to my thinking of the importance of pintles, that I always remove them but that is a personal thing that I do. It is not always required.

Q Getting back to the question of those pintles that you have seen, what percentage had horseshoe keepers on them?

A I'd say a large percentage.

Q What part?

A Greater than 75 percent.

Q Greater than 75 percent?

A Around 75 percent.

Q And the other 25 percent would be what type?

A Well, some of them had split pins, as Mr. Ganly described. I have seen them with none.

Q With none at all?

A I don't think that they are required as a requirement. They are done as a matter of prudence, good operation and good procedure.

MR. SMITH: No other questions.

CROSS-EXAMINATION

BY MR. LOESBERG:

Q Sir, did your company of Pillatt & Sweeney in 1966, if you remember, associate in any way with the owners of the Colombia, the then owners of the Colombia?

A We did work for them. They were customers of ours.

Q You did a lot of work for them?

A Yes, I did.

Q Now, with respect to the T-2s that you examined, did you say 50 to 75 percent have horseshoe keepers?

A That's my estimate, just a general estimate; yes, sir.

Q Do you have the original plans for the Colombia at the yard she was built at?

A I don't recall.

Q Have you ever seen them?

A Not to my recollection.

Q Did you ever see them when you went down there in 1964?

A I don't recall.

Q Have you ever seen them today?

A When you say "today," do you mean today?

Q Well, since 1964. I'm sorry.

A No, sir.

Q Now, do you know whether or not the specifications, or the design, or the plans of the Colombia called for the pin or not?

A I do not.

Q How many plans of T-2 tankers have you seen during your surveying experience that had original designs for horseshoe keepers?

A I have never seen any original designs.

Q How many for--

A I'm not a designer. I repair the vessels.

Q Right.

A I look at very few original plans, especially

for something as old as a T-2.

Q What I'm trying to ask--I understand what you said--what I am trying to clarify is, isn't it a fact, as far as you know, that the design construction for this type of T-2 rudder calls for the split pin?

A I would say probably.

Q Sure. Now you took ship construction in the Merchant Marine Academy, didn't you?

A A limited amount. It was a wartime course.

Q Did you ever hear of the maxim during that course that you are supposed to follow the design recommendations?

A There are many design changes over the years. Many designs are wrong and have to be corrected. We lost several T-2s at sea because the design was wrong.

Q Do you have any publications in the hands of Pillatt & Sweeney that show any design changes of that rudder from the pin to the horseshoe keeper that you are talking a[illegible]

A No, sir.

Q The answer is no; right?

A That's what I said; no, sir.

Q Now, let me ask you something further. You say you have examined, other than the Colombia, about how many T-2s? Not trying to be redundant but I couldn't hear you

before.

A I said originally this morning dry dock examination, approximately 100 to 150.

Q I mean with respect to the rudders.

A I clarified it to 50 to 75, I believe, in that area, where the pintle itself is examined.

Q How many?

A Or the enclosure.

Q How many?

A 50 to 75, as a guess, over a period of since 1948--25 years. I would have to assume that.

Q Do you know the Colombia ultimately lost its rudder?

A Yes.

Q Prior to the Colombia, have you heard of any other T-2 having lost its rudder?

A I know of T-2s that lost their rudders. The exact name or how many, I wouldn't know. I was aware that T-2s were losing rudders.

Q Have you ever made any surveys after they lost the rudder to determine the cause?

A Not that I recall.

Q I'm going to read you part of the testimony of Mr. Salzarulo, whom I am sure you know, and ask you

if you agree with this or not.

"Q Well, if we assume that on the previous dry docking the nuts had to be hardened up one year before, and then hardened up during 1965, what would cause the necessity to harden up the nuts?

"A Well, several things. Vibration could cause tack welds to fail on the keepers and the nut to back off, maybe one turn, two turns, whatever the case may be."

Do you agree with the answer to that question given by Mr. Salzarulo?

A Would you read the answer one more time, please?

MR. SMITH: I object to the question, your Honor.

Q "A Vibration could cause a tack weld to fail on the keepers and the nut to back off maybe one turn, two turns, whatever the case may be."

A I would say that's possible.

THE COURT: Well, I'm not sure where that goes but I'll permit it.

MR. LOESBERG: We have no further questions of this witness, your Honor.

THE COURT: All right.

(The witness was excused.)

THE COURT: Any other witnesses?

MR. SMITH: I have no other witnesses, your Honor.

MR. LOESBERG: Your Honor, you requested me to obtain this code of the weather and we have given it to Mr. Smith. Did you receive a copy?

MR. SMITH: Yes, I did.

MR. LOESBERG: And we have it here.

THE COURT: Mark it.

MR. LOESBERG: Mark it as an exhibit?

THE COURT: Mark it as an exhibit.

(Plaintiff's Exhibit 15 was marked for identification.)

THE COURT: What else do you have?

(No response.)

THE COURT: Both sides rest?

MR. LOESBERG: Yes, your Honor.

MR. SMITH: Yes, your Honor.

THE COURT: Do you gentlemen want to argue the facts in written form?

MR. LOESBERG: All right, your Honor.

THE COURT: It's entirely up to you.

MR. SMITH: I would prefer to do it that way, your Honor.

THE COURT: How long do you want?

MR. SMITH: I think if we set 30 days from the time we got the transcript when we were talking in chambers once before, your Honor.

THE COURT: All right. Let's have briefs in in 40 days from today. That should give you enough time to do it.

(Trial concluded.)

Due and timely service of Two copies
of the within APPENDIX is hereby
admitted this 28th day of April 1976

Burlingham Underwood & Lord/JPS
.....
Attorneys for DEFENDANTS - APPELLEES
AND THIRD-PARTY PLAINTIFF-APPELLEE